

1600

Volume 19

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

RE: IN THE MATTER OF THE APPLICATION) PSC Docket
INTEGRATED RESOURCE PLANNING FOR) No. 06-241
THE PROVISION OF STANDARD OFFER SUPPLY)
SERVICE BY DELMARVA POWER & LIGHT)
COMPANY....)

A hearing taken pursuant to notice

before Ellen Corbett Hannum, Registered Merit Reporter,
Wesley College, College Center, Room 206, Dover, Delaware
19904, on Tuesday, May 8, 2007, beginning at
approximately 10:00 a.m., there being present:

BEFORE: ARNETTA McRAE, THE CHAIRMAN

JAY LESTER, COMMISSIONER

DALLAS WINSLOW, COMMISSIONER

JOANN CONAWAY, COMMISSIONER

JEFFREY CLARK, COMMISSIONER

PHILIP CHERRY, DNREC

ROBERT L. SCOGLIETTI, CONTROLLER GENERAL'S
OFFICE

JENNIFER COHAN, MANAGEMENT & BUDGET OFFICE

APPEARANCES:

On behalf of the Office of the Public Advocate:

JOHN C. CITROLO

CORBETT & WILCOX

230 N. Market Street Wilmington, DE 19801
(302) 571-0510

Corbett & Wilcox is not affiliated with Wilcox & Fetzer,
Court Reporters

1601

1 APPEARANCES (CONTINUED):

2 On behalf of Bluewater Wind:

3 THOMAS P. McGONIGLE, ESQ.

WolfBlock

4 1100 North Market Street

Suite 1001

5 Wilmington, DE 19801

6 On behalf of NRG:

7 MICHAEL HOUGHTON, ESQ.

GEOFFREY A. SAWYER, III, ESQ.

8 Morris, Nichols, Arsht & Tunnell

1201 North Market Street

9 Wilmington, DE 19801

10 On behalf of Connectiv Energy:

11 RICHARD PURCELL, Manager

12

13

14

15

16

17

18

19

20

21

22

23

24

1602

1 THE CHAIRMAN: That takes care of

2 everything. I am guessing the rest of the people are

3 interested in the current docket on the RFP. Let me

4 just, so it will be helpful to tell you what my thoughts

5 are on how the process is going to move. We will start

6 off with a Staff summary of the recommendations. Then we

7 will hear from Delmarva, then the individual bidders,

8 then there will be the Public Advocate. I also have -- I

9 don't know if anyone from Delaware Energy Users Group is

10 here, they had filed comments, but we will have public

11 comment, and there are quite a number. So I expect that

12 that will be a three-minute time limit, maybe three to

13 five, we will have to see what we ultimately end up with.

14 So that's the process, and I might

15 mention, we do have representatives from the other State

16 agencies here. We have Philip Cherry from DNREC, Bert
17 Scoglietti and Jennifer Cohan from the Controller
18 General's Office.

19 All right. If we could get started. I
20 think Mr. Geddes is going to open up for Staff.

21 MR. GEDDES: Good morning, Madam Chair,
22 members of the Commission and members of the other State
23 agencies. I would like to take a few minutes to discuss,
24 sort of in a general way, Staff's proposal and then

1603

1 Mr. Howatt will walk through some of the particulars.

2 I find it curious that this docket
3 opened nine months to the day in August last year. It
4 seems like we have been at this for a long time. And
5 this docket has had a lot of twists and turns. I think
6 in part because the legislation, which has driven this
7 process, is rather unique. The fact that all of you are
8 sitting together listening to this I think is something
9 that has not been done very often in the history of this
10 Commission, and certainly in the last 25 years that I
11 have represented this Commission, I cannot remember one
12 occasion where State agencies have come to to try to make
13 a decision.

14 So it's an important opportunity, and I
15 think it's one that all Delawareans are quite concerned
16 about and interested in. I would like to make three
17 comments. First, this is just another step in this
18 process. There is nothing that's going to be determined
19 with finality today, Staff's proposal is a recommendation
20 for your consideration, but it is only a recommendation
21 to negotiate. It is not a final approval of anything.
22 And as I said, it's just another step in this process
23 that has been going on now for nine months.

24 But my three general comments are as

1604

1 follows: First, in some of the comments that have been
2 submitted there has been an allegation that somehow this
3 Commission and State agencies have not kept the public
4 informed. And I would like to take issue with that
5 because I think that this docket and the IRP have done a
6 Yeoman's job in trying to keep the public informed, and
7 also providing the public an opportunity for comment.
8 Just some statistics, if I might. Between the two

9 dockets there have been six public comment sessions held
10 in all three counties and one public workshop. There
11 have been 12 hours of public comment that have been
12 recorded in over 700 pages of transcripts, just for the
13 public comment, not for the other parts of this process.
14 And there have been thousands of comments that have been
15 received.

16 Now, if you have read Staff's report,
17 you know that on page 39 Staff refers to this public
18 input as being important in shaping its recommendations.
19 And I'm sure that Mr. Howatt will speak about that in a
20 moment. So I do think that perhaps it is inconsistent
21 with the record to suggest that somehow the public has
22 not been involved in this process. The public has been
23 involved in this process, and obviously has shown a great
24 interest in this process and the ultimate outcome.

1605

1 The second point I would like to make is
2 that the Commission's Staff and the Commission and the
3 State agencies have tried to comply with House Bill 6.
4 Now, there is no question others have looked at House
5 Bill 6 and suggested that perhaps the priority between
6 the RFP and the IRP could have been reversed, and
7 certainly that is open to fair comment. But the statute
8 is the law. And people's wishes and opinions about how
9 the process might be improved or have worked better must
10 also understand that this Commission and the State
11 agencies, to the extent they agree with this position,
12 but at least the Public Service Commission, is committed
13 to applying the law as it's written and not how others
14 think it should be. And in this case the RFP was given a
15 priority in terms of chronology, and the Commission has
16 tried to shape the statute, House Bill 6, to some extent
17 to at least allow for an interim IRP report to be
18 considered in this process.

19 Third and final, Staff's
20 recommendations, it believes, are consistent with the
21 statute. Others may take issue and others may say they
22 are not going to comply, but Staff has attempted to
23 comply with the statute and make recommendations that are
24 consistent with it. In my 25 years' representing you, I

1606

1 have never asked the Public Service Commission to do

2 anything that I thought was illegal, and I don't think
3 that you can suggest -- and I hope people don't believe
4 that Staff's recommendations are somehow an attempt to
5 not comply with the statute. All statutes are subject to
6 interpretation, and reasonable people can disagree, but
7 Staff believes that its proposals are consistent with the
8 statute, and we will be recommending them to you at the
9 end of this process.

10 Mr. Howatt.

11 MR. HOWATT: Good morning,
12 Commissioners, State representatives. I have copies of
13 slides, I have about 12 slides and there are copies if
14 you don't have one already, there are some up here. And
15 I will ask Mr. Bloom, my assistant here, to pass them out
16 if everyone needs one.

17 THE CHAIRMAN: Why don't we just hold
18 off for a minute until the copies are distributed.

19 MR. HOWATT: Meanwhile, I apologize to
20 the audience, obviously you don't have the best view of
21 me from the back side; however, I will try to use body
22 language to try to emphasize certain points. I was going
23 to wear my sweatshirt with the little target emblem on
24 the back, but...

1607

1 This isn't even like church, everyone is
2 sitting up front.

3 THE CHAIRMAN: Okay. I think we are
4 basically ready.

5 MR. HOWATT: Once again, Commissioners
6 and State agencies, I appreciate this opportunity to
7 address you. Throughout this process, Staff has
8 endeavored to really comply with the Electric Utility
9 Retail Customer Supply Act of 2006, and in particular the
10 values that that legislation put forth. This has not
11 been an easy process given the time frames, the need to
12 include public participation, we have tried, as best we
13 could, to go through this expedited process and include
14 everything that was necessary.

15 I think a better point to be made, as
16 Mr. Geddes has already pointed out, not only did they
17 have an opportunity for public comment, but we listened
18 to public comment and we heard what the public was
19 saying. And we believe that we have taken that into

20 consideration in our recommendations.

21 As we began to examine all of the issues
22 that were surfaced in the reviews and the public comment,
23 it became apparent that there were a few pieces missing
24 to really be able to take a comprehensive look at the
1608

1 proposals as they were submitted. What's the load to be
2 served? We have had discussions about that all the way
3 along this process. There is a question about which one
4 of the proposals will keep the lights on in Delaware?
5 It's important to keep the lights on in Delaware. How do
6 they compare to potential regulated generation solution?
7 Were these projects fairly evaluated? Can Delaware
8 manage the financial risks associated with these? And
9 lastly, what really should be the public policy around
10 generation supply and what should we be looking at? We
11 believe the legislation probably set that out fairly
12 clearly, and that's what we attempted to follow.

13 It's extremely important for you to be
14 aware that this recommendation is not a short-term
15 recommendation, it's not going to get us just through
16 Governor Minner's term, it's not going to get us just
17 through whoever happens to be the next Governor's term.
18 This is a long-term solution and it's a long-term
19 solution for Delaware. We need to be very careful as we
20 move forward. It's with this prospective that we
21 examined the proposals and came up with our recommended
22 solutions.

23 Various participants have pointed out
24 the wonderful characteristics of many of these proposals.
1609

1 We know about wind. We know about NRG and the jobs that
2 it would bring to Sussex County. I am a little hurt that
3 nobody fell truly in love with the Conectiv Energy
4 proposal, although it was the No. 1 in terms of the bid
5 evaluations. I believe there are positives associated
6 with that, and we thought that it needed to be looked at
7 very seriously.

8 I apologize to Conectiv Energy if I said
9 anything bad, it's just that we never heard anybody come
10 out and really advocate for that particular proposal, but
11 yet it was the best proposal in the bid evaluation
12 process.

13 We have the Public Advocate that came
14 out, and the Public Advocate was basically saying, we
15 believe that it has to be a proposal that is below market
16 price. There were more sentiments in this whole
17 proceeding that probably any one person could keep track
18 of.

19 What was Staff's approach? Did we favor
20 price? Did we favor price stability? Were did we favor
21 environmental benefit, innovation, existing fuels and
22 infrastructure, system reliability and other
23 characteristics? We have had everybody say, well, you
24 did this because of reliability or you did this because

1610

1 of the environment. The answer is no, we didn't do it
2 for any one of those particular reasons. We did it
3 because we truly believe that the solution we came up
4 with provides the best value and actually fulfills the
5 needs of the energy legislation.

6 There was no one proposal that did
7 everything well. That was the reason we selected a
8 hybrid. We believe that a complementary approach to two
9 of the generation proposals is a very good opportunity
10 for Delaware to gain a very good reliability and a good
11 process in selecting the legislation. As counsel has
12 already pointed out, this is not an opportunity to select
13 whether BluewaterWind is our future generator or NRG or
14 Conectiv is our future generator, this is just an
15 opportunity to decide who you want to talk to, what are
16 the possibilities? What's the final prices that you can
17 come up with? What's the final sizes locations, types of
18 plants? There is a whole list of things, including the
19 nonconformity issues that are still out there. And
20 truthfully, if you really wanted to, you could reject
21 every one of these bids because they are all
22 nonconforming in one way or another.

23 Along with the conformance issues, we
24 believe there are other things that need to be talked

1611

1 about in negotiations with the parties.

2 Okay. I do have a few slides I want to
3 run through. Slide 2 is a real important slide. All it
4 does is document the chronology of the major things that
5 have happened in this case. I'm certainly not going to

6 spend a lot of time on it. For those of you who have
7 persevered with us, you are well aware of all the time
8 and effort that has gone into this whole process.

9 Slide 3 is a rehash of the same
10 questions I just asked. What is the SOS load
11 requirement? What should be our supply planning
12 methodology? Should we rely on energy market? The same
13 questions I have asked all the way along, and those are
14 the ones I want to go into in a little more detail -- not
15 a lot, just a little.

16 Slide 4, slide 4 talks about Staff's
17 perspective on what the load requirements are. We took
18 Delmarva's 2005 chart, we took the midpoint, being 490
19 megawatts in 2005; that midpoint means 50 percent of the
20 time load is higher than that number and 50 percent of
21 the time load is lower than that number. So it was a
22 midpoint. It was an average.

23 When we did that, we looked at how the
24 various entities had escalated the load. PJM had
1612

1 escalated it at 1.6 percent on average. PJM's PPL zone
2 actually went up 1.9. There was an Energy Task Force
3 that looked at growth in Delaware and said it's probably
4 a little over 2 percent. Staff used 2.1 percent. You
5 could argue about a lot of things with respect to the
6 load. You could say, well, you have got the wrong
7 escalation factors. You have got the wrong approach to
8 this thing. You don't -- haven't taken migration into
9 consideration. There are so many different arguments
10 against this that I'm not going to spend a lot of time
11 there. There are unknowns no matter what you do in this
12 process, and we just picked one.

13 We came up with a total of 575
14 megawatts. And if you take the 30 percent of the market
15 away from that, you wind up with about 400 megawatts.
16 Then you take another hundred megawatts away because you
17 have conservation, energy efficiency, you certainly have
18 migration risk, and you get down to about 300 megawatts.
19 Well, guess what Staff's presentation recommended? Three
20 hundred megawatts. That was our concern and that's what
21 we think is best for Delaware, and it allows us to have
22 what Staff considers to be a portfolio approach.

23 We believe that the portfolio is

24 important: 30 percent from the market, 50 percent from
1613

1 generation, 10 percent from energy efficiency, and 10
2 percent possible migration loss. That's what we came
3 forth with. Is that right? Probably not. Is there some
4 mixture in there that's going to be there? We believe
5 so. So you see the pie chart on your presentation,
6 hopefully. I don't know whether it made it to the last
7 -- on slide 4, I don't know whether it made it on all the
8 copies, but it's just a representation of a mix and a
9 portfolio that Staff believes we should be pursuing with
10 energy.

11 Slide 5, how can Delaware best plan for
12 supply?

13 THE CHAIRMAN: You know, I was noticing
14 on slide 4, you did not account for the collective ages
15 of the Commission. I think I have it.

16 (Laughter.)

17 MR. HOWATT: I thought about a thickness
18 chart, the pie chart would have a certain thickness that
19 would highlight the ages of the State representatives and
20 the Commissioners.

21 THE CHAIRMAN: That was a test.

22 MR. HOWATT: Slide 5 talks about the
23 best way to plan for supply. We have gone through the
24 legislation, it obviously says, look at lots of different
1614

1 things. We have tried to value those. There was a
2 Synapse Energy Economics report that advocated a
3 portfolio approach. There was a FERC study that says
4 long-term supply requires a broad-balanced portfolio.
5 NRRI, the National Regulatory Research Institute,
6 identified portfolio analysis as a recommended approach.
7 The Cabinet Committee on Energy said we had to look at
8 different things when we were looking, and we had to go
9 beyond the energy market. The News Journal picks up an
10 OMB report that says something about portfolio. Gee, I
11 wonder is this a surprise to anybody that Staff would
12 recommend a portfolio approach? I think you have to
13 understand where we are coming from, the preponderance of
14 evidence says a portfolio approach minimizes risk and
15 maximizes benefit, and we believe that to be the case.

16 Slide 6, should we rely on energy

17 markets? Well, we all know what happened in the energy
18 market when the rate freeze came off. And, frankly,
19 that's not all the fault of the energy market, that's
20 certainly the fault of having set up the rate freeze and
21 everything in the beginning. So there was expected to be
22 some increases out there, they just happened to be a lot
23 larger than I think anybody anticipated. However, I
24 stood before this Commission -- actually, I was sitting,
1615

1 to be honest -- I sat before this Commission and
2 discussed capacity, and I remember talking about
3 capacity, and I remember telling you that capacity was
4 only 3 percent of the total customer bill. Well, lo and
5 behold with PJM's wonderful new reliability pricing
6 mechanism, pricing is probably now 10 percent of the
7 customer's bill. And in the meantime energy has gone
8 down very little but capacity has gone up tremendously.
9 So the question is: Can you rely on a market that does
10 those kind of things for price stability? 1,227 percent
11 increase was the estimate given by Boston Pacific on
12 capacity pricing. That's a tremendous increase. It's
13 something that we have had to absorb and has been
14 recently filed in the latest Delmarva's rates.

15 There is chronic congestion on the
16 transmission system. We pay anywhere from 5 to \$10 about
17 because of congestion that's in PJM, not necessarily on
18 the peninsula. In fact, the peninsula congestion levels
19 are down. Delmarva has managed that very, very well.
20 What we are paying for is the east/west congestion. So
21 there is certainly a need to have some transmission that
22 minimizes that congestion and minimizes the cost impact
23 to Delaware.

24 But as long as we are still relying on
1616

1 the market, we are going to be paying that until such
2 time as that congestion is eliminated in 2011, '12, '13,
3 whenever the transmission line gets built across there.
4 Market power has been concentrated on the peninsula. PJM
5 provides a description and says it's moderately
6 concentrated. These are with indexes -- the Herschell
7 Hoffman indexes, or whatever they are, there is this
8 magical index they measure by, and it's been in the
9 neighborhood of a thousand to 1200 and a thousand to 1800

10 is moderately concentrated market power. So we believe
11 that there is another reason why the market is perhaps
12 higher than it perhaps needs to be.

13 And certainly we looked at reregulation.
14 Staff did its report, suggested that reregulation, or if
15 regulation had continued from previous time frames that
16 price increases wouldn't have been in the 59 to 100
17 percent but more like 35 to 40 percent. We believe that
18 relying totally on the market is the wrong direction. We
19 believe that you need a mixture, part of it on the
20 market, part of it on your own generation.

21 Slide 7, how were the projects
22 evaluated? Everybody knows what weighting we used on
23 this whole process. Frankly, we valued all of the
24 requirements of the legislation, baseload technology,
1617

1 long-term environmental benefit, existing fuel and
2 transmission infrastructure, fuel diversity, all the
3 criteria that were mentioned in there. People have
4 argued that this process was flawed from the very
5 beginning because we had the wrong weighting on various
6 components of the evaluation.

7 Frankly, Staff went through and said,
8 let's look at it from a super category perspective, and
9 we did a little bit of an analysis. And if you look at
10 our analysis in the report you will see that lo and
11 behold Conectiv Energy is No. 1, BluewaterWind is No. 2,
12 and NRG was No. 3. There was just an arbitrary
13 one-third, one-third, one-third rating across the super
14 categories. We believe that the evaluation was done
15 appropriately, and it was certainly monitored by our own
16 independent consultant. And we believe the monitoring
17 was done very effectively, and we are not arguing with
18 the results at this point in time. We don't think there
19 is any need to waste any time arguing about the result of
20 the bid evaluation.

21 Slide 8, what's an appropriate public
22 policy? You know, the legislation provided us with some
23 direction. It identified the items that they thought we
24 should be valuing in this whole process. And we listened
1618

1 to public input, after public input, after letter, after
2 phone call, after everything. You know, we came to a

3 pretty quick conclusion. You know, Delaware ought to
4 take charge of its own energy future. It ought to do
5 that with a portfolio that effectively manages energy
6 risk and obtains the benefit of a diverse energy
7 portfolio. It's time we took advantage of what we need
8 in Delaware and try and manipulate -- that's a very bad
9 word -- try and move some of our bidders to consider some
10 of the things that we think we need in Delaware.

11 Slide 9 talks about managing financial
12 risk. I believe -- and, please, don't quote me on this,
13 but I am pretty sure it was close to 18 pages that
14 Delmarva spent identifying potential risks associated
15 with this project. And guess what, they are absolutely
16 correct. There are a number of risks associated with
17 this project. The thing that you have to be able to do
18 is to manage those risks and manage them effectively.
19 When you go into negotiations with any party for any type
20 of generation, you need to have a little bit of give and
21 take. You need to be able to give some on some of the
22 risk issues, you need to take some on the more critical
23 issues. That's all we are asking.

24 We believe that these risk issues are
1619

1 things that can be negotiated within the contract, and
2 hopefully we can provide a proper balance to the risks
3 associated with it within the contract. If we can't, we
4 are no worse off. We just are back to square one and
5 looking for other ways to provide supply.

6 We recommend not only being flexible in
7 looking at risk within the negotiation process, but risk
8 ought to be an inherent measurement within the whole
9 portfolio planning process. We have talked about energy
10 conservation efficiency. It could possibly supply
11 everything. I would like to assign a risk factor to that
12 myself personally, because I think there are a lot of
13 people that spend \$3,000 a week down the beach and they
14 are not going to want to turn their air conditioners off
15 down there when they are busy partying down the beach.
16 So I think, you know, it's appropriate to assign a risk
17 factor to every component within your portfolio, and I
18 think that's the way it should be done.

19 Slide 11 -- I am almost done, bear with
20 me. What's the Commission's options? Obviously you can

21 reject all of the bids as nonconforming, I think we have
22 been there from square one, that's always a possibility.
23 I think the legislation says that you can select one or
24 more of the bids to move forward with. We believe the
1620

1 one or more is the optimal solution for Delaware. You
2 could defer your decision and wait for the completion of
3 the IRP; January, February 2008 perhaps we could come
4 back and we could revisit this process. I don't think
5 you are going to have any more information at the
6 completion of an IRP docket than you will at this point
7 in time. And I certainly urge the Commission and the
8 State agencies to take an action at this point in time.
9 And if you don't like what we have done, you don't like
10 our suggestion, please feel free to take action on your
11 suggestion. We just believe this has to move off dead
12 center and something needs to be done, and the last thing
13 we need to do is wait for an IRP.

14 You could suggest legislative
15 alternatives. There has been a lot of criticism of the
16 legislation, so we could always go back and say, you
17 know, we are unclear about a lot of issues and we don't
18 think this is the way you meant this legislation to play
19 out. So, therefore, we are going to suggest these
20 changes to the legislation. This is a possibility that
21 you need to consider. And obviously when you get a
22 chance to read the OMB report, I believe it says
23 something about reregulation. Certainly an option. Even
24 the current legislation provides us with that option.
1621

1 There is the possibility that we could ask Delmarva, even
2 as a delivery company, to provide generation on a
3 regulated basis. And I believe in fact, Delmarva could
4 negotiate with the parties that we encourage them to
5 negotiate with to talk about a regulated solution if that
6 was in the best interest of all the parties.

7 THE CHAIRMAN: For now, I would like to
8 just focus, if you will, on what you are proposing.

9 MR. HOWATT: What Staff recommends,
10 thank you, Chairman McRae.

11 Slide 12, portfolio planning, minimize
12 risk, maximize benefit. We should ensure that Delmarva,
13 responsible third party, actively plans and manages the

14 energy supply. Delmarva should be directed to negotiate
15 with Conectiv and Bluewater for a hybrid generation
16 approach that meets Delaware needs and the Commission
17 should ensure independent oversight and review of all PPA
18 negotiations.

19 Thank you, Commissioners, and I
20 appreciate the opportunity to address you.

21 THE CHAIRMAN: Do the Commissioners have
22 any questions at this point? Also other State agencies?
23 Commissioner Winslow.

24 COMMISSIONER WINSLOW: Thank you, Madam
1622

1 Chair.

2 Bob, there are people of a mind that
3 think that demand-side management and other energy-
4 conservation efforts could do away with our need for new
5 generation. Would you kindly give me a little bit more
6 information in that area with respect to why Staff is
7 supporting new generation over the energy conservation?

8 MR. HOWATT: Staff believes that energy
9 conservation, energy efficiency, demand-response
10 programs, all play a very key role in moving forward with
11 our portfolio supply planning. The reason we have not
12 taken a position that that could meet all of our supply
13 requirements is that we do not believe that the
14 administration and the effort that's needed to be able to
15 get to that level has been demonstrated, actually, in any
16 jurisdiction. New Jersey has probably come closest in
17 trying to push energy efficiency. They are our role
18 model state, I have heard people describe it. But even
19 in New Jersey, they still have a generation problem in
20 New Jersey. They have older, coal-fired units that are
21 retiring. Will they be able to meet their goals of
22 energy supply with just conservation? I mean, nobody
23 that I'm aware of has attempted to meet the full supply
24 in that respect.

1623

1 California, another notable
2 jurisdiction, that is attempting to move forward with
3 energy conservation, efficiency -- gee, they also have a
4 proposal out there for generation. They don't want to be
5 caught short again. They have suffered through that
6 process and don't want to be there again.

7 So, you know, I believe that energy

8 conservation efficiency, demand response, that is really
9 good, and it's probably the cheapest solution; but is it
10 100 percent of the solution? I'm afraid I would have to
11 assign a higher risk factor if somebody said to me that
12 it's going to be 100 percent of the solution. We just
13 haven't seen any jurisdiction that I'm aware of take care
14 of their full supply requirements through that process.

15 COMMISSIONER WINSLOW: Would it be fair
16 to say, as far as the Staff is concerned, that that
17 position is a pretty solid one? In other words, there is
18 not considerable doubt with respect to what you say, you
19 feel pretty certain that that position is an accurate one
20 with respect to conservation?

21 MR. HOWATT: We believe it is.

22 If you will pardon me one second, there
23 is another issue around energy conservation and, that is,
24 reliability. If in fact you "put all of your eggs in one
1624

1 basket," whether it's generation or whether it's energy
2 efficiency, if all of a sudden the hottest day in the
3 summer comes and it's 105 degrees and a few generation
4 plants dump off line and you are stuck with waiting for
5 energy efficiency and conservation and demand response to
6 come to your aid, I truthfully believe you would see
7 rolling blackouts again very quickly.

8 And I didn't want to get to that
9 discussion, but I think that that is a possibility.

10 THE CHAIRMAN: Commissioner Clark.

11 COMMISSIONER CLARK: Bob, has there been
12 any thought toward what effect or what additional
13 marginal cost there would be over the various projections
14 of going with your hybrid approach? I mean, I know we
15 have had estimates from the consultants what that, what
16 the increase marginal costs would be of accepting the
17 bids proffered, but would it be -- could we assume that
18 it would be less because it's a scaled down approach in
19 both situations?

20 MR. HOWATT: I guess I would like to
21 make two points, if I may, in response to you. The first
22 point I would like to make is there have been people that
23 have been pointing to price as the ultimate
24 decisionmaker. And we do not believe that price is the

1625

1 ultimate decisionmaker. Is it a big part of the
2 decision? Absolutely. But it's not the key
3 decisionmaker.

4 Now, with respect to your question -- I
5 am having a senior moment.

6 COMMISSIONER CLARK: Just with the scale
7 down, if the marginal costs could -- I mean, is there an
8 assumption that's available or appropriate?

9 MR. HOWATT: Oh, yes. When we looked at
10 the pricing, we had the public comment sessions and we
11 talked about the Conectiv proposal would probably raise
12 prices about maybe a dollar over market value, and then
13 we had the BluewaterWind that would get it to about \$12,
14 maybe 12 and a half dollars a month over market value,
15 then we had the NRG proposal which was probably closer to
16 the neighborhood of 14 to \$15. When we looked at the
17 hybrid as we proposed it for Delaware, I am sorry to say
18 that the pricing is probably closer to the 13 to \$14 a
19 month range. I mean, that's where we are. But that's
20 also given the proposals as they have been evaluated at
21 this point in time, which is also an estimate of where
22 the market is going to be. So what the ultimate price
23 will be is anybody's guess. It also depends on how
24 effectively Delmarva could negotiate with what we are

1626

1 looking for.

2 But we believe that the Bluewater
3 proposal will probably come down a little bit in price
4 for us, the Conectiv Energy will probably go up a little
5 for us in price, and ultimately we would probably be in
6 the 13 to \$14 range as it compares to the analysis that
7 was done on the evaluations.

8 COMMISSIONER CLARK: And that's 13 to
9 \$14 per month for your average consumer?

10 MR. HOWATT: Right. It is not by any
11 stretch the lowest price approach. But I will point out
12 that, you know, it provides benefits that have been
13 identified by a lot of other people well beyond the
14 pricing issue, and that's the health concerns with
15 respect to the environment, the reliability that it
16 provides to not only Delmarva's customers but also to
17 everybody on the peninsula, so there are other benefits

18 associated with it.

19 COMMISSIONER CLARK: Thank you.

20 THE CHAIRMAN: It might be beneficial to
21 explain how you came to the hybrid. I do believe the
22 cost issue is something that will need to be wrestled
23 down in negotiations, because I can also see that the
24 quantity of the considerations are going to impact that
1627

1 number, probably in the ballpark, but it's certainly
2 something that, before things are finalized -- if that
3 would be the selection -- the Commission would need to be
4 kind of honed down some. But I would appreciate it if
5 you would elaborate more as to how you came to the hybrid
6 decision after our discussion of the three bid proposals.

7 MR. HOWATT: Actually, it was probably
8 in a public comment session that we were sitting there
9 listening to people say, You really need to be
10 considering what Delaware wants or what Delaware needs.
11 And as I was sitting there in the meeting, you know, we
12 liked the wind-farm proposal. We thought it was
13 environmentally extremely add advantageous to Delaware,
14 if we could get over the pricing hurdle. But as we sat
15 there and thought about it, the wind does not blow 100
16 percent of the time. And so, therefore, what could you
17 possibly use as backup? Well, lo and behold, when you
18 think about it you could actually pick up a gas turbine.
19 Okay? But you know, then, when you begin to look at the
20 combination and you say, well, you got that, you got that
21 at Hay Road, and you have got the wind farm down there
22 and everything is great; but then you think back about
23 the 1999 rolling blackouts, and you say, what was part of
24 the problem there? Well, part of the problem was that we
1628

1 had very, very low reactive support in the lower part of
2 the Peninsula, in particular when the units dropped
3 offline.

4 So, we said, you could get reactive
5 support from a gas turbine and you can run it as a
6 synchronous condenser, maybe we ought to be looking at
7 that and maybe we ought to be looking at that in the
8 south. Then we said, you know, we have got a whole bunch
9 of issues out here that are nonconforming that need to be
10 negotiated. Every one of these bidders came in with

11 their project and everybody had taken their best shot at
12 it and said these are the things we need to be
13 considering. I just got tired of it. It's time the
14 Staff had an opportunity to put into line some of the
15 things that they think they need to consider.

16 So when we came out of this process, we
17 said let's throw size and location on table. Let's say
18 that's going to be one of the issues that we are going to
19 talk about. Because if in fact we could put a
20 synchronous condenser as a backup unit in lower Delaware,
21 we would have the best of all possible worlds. That's
22 how it kind of came about. We talked about it amongst
23 ourselves at the commission office. And, frankly, aside
24 from the pricing issue, which we know is an issue,
1629

1 everybody seemed to think that was the right approach to
2 take. And so that's what we formulated our
3 recommendations around.

4 THE CHAIRMAN: Commissioner Winslow.

5 COMMISSIONER WINSLOW: Thank you, Madam
6 Chair.

7 Bob, if the plants do go into being in
8 Sussex County, how will that affect the LNP in the future
9 subsequent to their commissioning and in what states will
10 that affect take place? And tell the people what LNP is,
11 please.

12 MR. HOWATT: Actually, there are three
13 things that you pay for when you pay for your supply:
14 You pay for the locational marginal price of energy; you
15 pay for the capacity associated with it, the capacity is
16 your steel in the ground, your actual generator unit and
17 availability of what it has; and then you pay for
18 ancillary services, whether it's Black Star in
19 regulation, you pay for some of those things because
20 those are things that PJM needs on its system for
21 reliability.

22 With respect to lower Delaware and with
23 respect to the gas turbine and, in fact, the wind farm,
24 if you contract with a wind farm and a gas turbine and
1630

1 you contract for their energy, which is their price of
2 energy, not necessarily the market price, which is LNP,
3 but their price of energy, you contract for their

4 capacity and their price for capacity, and even contract
5 for a Black Star ability or whatever you want to contract
6 with the generator that they can provide, the minute you
7 contract with those, you are effectively bypassing the
8 PJM market for the portion that you contracted through
9 them. Okay?

10 That means that no matter where the PJM
11 market goes for that particular amount of energy, you are
12 actually just going to pay your contracted price. It
13 could go higher, it could go lower, but at least you know
14 what the price is going to be. And it's -- these
15 generators would probably -- lots of things would impact
16 LNP and energy prices and capacity on the peninsula. The
17 new transmission line that Delmarva proposed would
18 certainly lower prices. And if that goes forward, that
19 would probably help take care of some of the congestion
20 and lower prices for energy; I don't know exactly what it
21 would do for capacity. It might help to lower capacity
22 charges a little bit, but it's kind of an unknown. There
23 are lots of things -- demand response and energy
24 efficiency. If you shave the peak of your peak load off
1631

1 with demand response and energy efficiency, you are also
2 going to lower the overall prices in your region. So
3 there are lots of ways to impact the prices.

4 COMMISSIONER WINSLOW: I don't think I
5 asked my question as well as I should have and could
6 have.

7 With respect to the nonSOS purchasers of
8 the electricity, if you end the constraint in Delmarva by
9 placing generation in Delmarva in Southern Delaware,
10 would that have the effect of lowering the LNP price in
11 the area of Delaware, Maryland, Virginia, and New Jersey?

12 MR. HOWATT: I am sorry to report that
13 whatever we do in Delaware will have regionalwide effect.
14 PJM prices a lot of things with respect to the DPL zone.
15 The DPL zone is all of Delaware, the lower counties of
16 Maryland on the peninsula and the two counties in
17 Virginia. To the extent that there are excess capacity
18 available through any of these plans, to the extent that
19 there is energy available for sales to somebody else in
20 the region, to the extent that any of these things
21 happen, whether it's demand response and energy

22 conservation, I mean just putting a new light bulb in
23 your house lowers the price for everybody in the Delmarva
24 zone, that includes Virginia and Maryland. And to the
1632

1 extent that you add additional generation in Delaware and
2 you lower the flows between West Virginia and New Jersey,
3 that also has an impact on Delaware rates.

4 So there is a broad-based regional
5 impact on rates. Is it a large number? I don't think
6 it's a really terribly large number, but it certainly
7 would reduce prices all the way around.

8 THE CHAIRMAN: If I might just follow-up
9 on Commissioner Winslow's question, though. Isn't the
10 peninsula in somewhat of a unique situation because of
11 its configuration that whatever is done on the peninsula
12 in general is going to benefit without regard even to the
13 other surrounding states, it's geographic components by
14 itself have certainly implications?

15 MR. HOWATT: I mean, Delmarva is a load
16 pocket, and certainly the geographical way it's been laid
17 out, you are absolutely correct, Chairman McRae, it would
18 definitely work that way. There is no other -- I mean,
19 but there are other load pockets that suffer similarly,
20 there is the Maryland, D.C., Washington, Baltimore,
21 that's becoming a load pocket very quickly because of,
22 again, generation losses over there.

23 As generators continue to retire, we
24 just believe that it's time for Delaware to take its own
1633

1 energy future in its hands and do something with respect
2 to generation, but, yes, it is a peninsulawide issue.

3 THE CHAIRMAN: One other thing, I think
4 Commissioner Winslow asked about a brief explanation of
5 the LNP locational marginal pricing. And if you could
6 just do that succinctly, because we have many speakers
7 today.

8 MR. HOWATT: Locational marginal price
9 is the one portion that you pay for the energy that comes
10 into your house. You also pay other little charges, but
11 that's one of the key things. It's the energy you use to
12 light your house, to heat your house. Okay. What
13 happens in LNP, PJM has a pricing mechanism. And PJM
14 does economic dispatch on its generating units; that is,

15 for the most part it dispatches the lowest price units
16 first. And that works really well until you get to the
17 point where a transmission line becomes overloaded. And
18 if you have a transmission line that's overloaded, the
19 only way you can unload that transmission line is to drop
20 load or to pick up generation on the other side of the
21 that transmission impasse.

22 So what happens then is PJM effectively
23 dispatches a higher-priced unit on the other side to help
24 pick up that loading balance, and it reduces the flow on
1634

1 the transmission line, the transmission line is then back
2 in balance and there is no excessive loads on the line,
3 but you also wind up paying a different price. And the
4 price is different on either side of the transmission
5 line. The price is always higher on the congested side
6 of the transmission line and lower on the uncongested
7 side of the transmission line.

8 So, hence, locational marginal pricing
9 means, what is the incremental price that you are having
10 to pay in a congested region versus an uncongested
11 region? And that price is principally caused by
12 dispatching generation units out of economic order or
13 dispatching higher-priced generation. And PJM does
14 hourly minute-by-minute calculations of what this pricing
15 is and it changes hourly and by minutes. So it changes
16 by location. And it all changes, depending on what
17 generation is dispatched and what the load flows are on
18 the transmission system.

19 It's a very dynamic system and it has
20 got to keep it in balance. And the key is, a higher
21 locational price, what does that really mean in a
22 particular area? Originally it was designed to make
23 generation want to come into that area. You get a higher
24 price if you put a generating plant in that particular
1635

1 area. Somehow that never played out. Instead, they
2 started working about, let's eliminate congestion by
3 upgrading transmission lines. Then PJM came out with
4 this capacity model and said, you know, if we give more
5 money at this locational capacity price over here, we
6 will encourage generation.

7 It remains to be seen. But that's, in a

8 nutshell locational pricing. It has taken the economic
9 balances, and they are different at different locations.

10 THE CHAIRMAN: Are there any more
11 questions? Mr. Scoglietti.

12 MR. SCOGLIETTI: Just a clarification
13 about something that Bob said. He mentioned a report
14 that the office of the controller general and the office
15 of budget released yesterday, and specifically referenced
16 reregulation. I want to clarify that the report did not
17 necessarily say that reregulation was realistic, and in
18 fact, it stopped short of that, but it did recommend some
19 steps that could be taken for Delaware to sort of take
20 hold of their energy future.

21 THE CHAIRMAN: Thank you for that
22 clarification. I haven't seen the report as of yet, but
23 it's helpful to know, otherwise this would be an
24 exercise, frankly. Yes.

1636

1 MR. CHERRY: Can you hear me all right
2 Bob?

3 MR. HOWATT: No.

4 MR. CHERRY: I have never been accused
5 of not being able to be heard.

6 Bob, first of all, let me thank you and
7 the rest of the Staff, the Public Service Commission for
8 an outstanding report. The analysis and the thought that
9 went into that was extraordinary and I really, really
10 appreciate how it enlightens this dialog and this debate.
11 You really have done an outstanding job, and I want to
12 get that on the record.

13 MR. HOWATT: Thank you, Phil.

14 MR. CHERRY: One of the really appealing
15 aspects of the BluewaterWind bid is that it is insulated,
16 if you will, from natural gas spikes, gold spikes,
17 terroristic activities in Saudi Arabia, whatever it might
18 be, and yet the hybrid proposes a gas-fired unit,
19 admittedly in the south where it might help with
20 congestion charges and that made sense.

21 But how is it that you embrace in the
22 hybrid a gas-fired facility when one of the reasons you
23 endorsed Bluewater is because it's not gas fired?

24 MR. HOWATT: I think when you think

1637

1 about fuel diversity, it would be nice if the entire
2 world ran on wind energy or even, at least, renewable
3 energy types of generation, but in reality, if global
4 warming for some unknown reason caused the wind to stop
5 blowing, we would be in deep trouble. Now, does that
6 mean that we advocated a coal-fired facility? No. We
7 certainly were considered the emissions and everything
8 along with it. But we also considered reliability and
9 considered that there is just going to be some time when
10 you are going to have to run fossil fuel. And if you
11 have to run fossil fuel, what is the best fossil fuel to
12 run? Frankly, it's probably natural gas. It's pricey,
13 and we understand that.

14 But you also have to keep in mind that
15 when we talked about the gas turbine, we did not envision
16 that running as a baseload unit. We envisioned that
17 running more as a peaking unit and, perhaps, for voltage
18 support as necessary. You get voltage support by other
19 generators as well, from the Vienna area, from the
20 Commonwealth Group down in Virginia. I mean, you get
21 energy -- voltage support from a lot of different places.
22 We were hoping when we put this forth, this proposal,
23 that the gas turbine would not run as a baseload unit.
24 Yes, it would add to carbon dioxide, it would add to
1638

1 global warming, but we were hoping that the wind power
2 and the availability of wind power for maybe 50, 60, 70
3 percent of the time would be a tremendous offset and
4 that, you know, we would have to suffer a little bit with
5 some of the bad points of natural gas.

6 But we didn't go so far as to recommend
7 a coal-fired facility.

8 MR. CHERRY: I appreciate that
9 reasoning.

10 Although, NRG, to their credit, made a
11 credible proposal. It was ranked third out of three for
12 a number of reasons, which we are all largely familiar
13 with, but there were some environmental benefits from an
14 IGCC unit and the shutdown of units 1 and 2 in
15 combination with the requirements that they would have on
16 3 and 4 as a result of DNREC's multi-P regulation. I
17 mean, there were some and conceivably are some benefits
18 to their proposal. Admittedly, they are more expensive,

19 I guess, in the independent consultant's report, but did
20 you give any thought to maybe giving NRG a nod to
21 negotiate something that might have been to their
22 advantage?

23 I mean, we are suggesting in your hybrid
24 that Bluewater be able to negotiate a reduced megawatt
1639

1 load supply, perhaps NRG could negotiate something that
2 might bring some environmental benefit to us far short
3 of, perhaps, their full proposal.

4 Did you give that any thought?

5 MR. HOWATT: We gave that a lot of
6 thought.

7 The complementary group that we put
8 together, the gas turbine and the wind farm, just worked
9 from a lot of different perspectives very, very well. We
10 have also heard Delmarva, we are not going to negotiate.
11 Okay. If they don't want to negotiate, then what about
12 Conectiv Energy? What do they want to do? What if
13 Conectiv Energy doesn't want to negotiate or doesn't want
14 a unit down there? You know, Indian River, NRG's
15 facility is perfectly located. Could we talk to NRG
16 about a gas turbine? Could we talk to NRG about a
17 smaller gasification facility? Absolutely. I think a
18 lot of this, and a lot of what we suggested is if all
19 else fails, if Bluewater can't reached an agreement on
20 something or they have certain parameters that are just
21 deal-breakers and Conectiv Energy for some reason says,
22 you know, to heck with you, we believe that -- that was
23 gesture language -- we believe that NRG made a very good
24 faith offer. Yes, it has advantages.

1640

1 I know a lot of people are concerned
2 about it as a coal-fired station, but I have to point out
3 that it's not the typical coal-fired station. And
4 certainly they were willing to reduce the pollution from
5 Indian River No. 1 and 2, all advantageous to Delaware.
6 We believe there possibilities that we could work with
7 NRG. And a lot of this plays out.

8 We took the bids in order, frankly. We
9 said the first bid that came out was the best evaluation,
10 and if you lumped that with the next one it really works
11 out really well, and then you get to the third one.

12 Those people deserve an opportunity to talk, too, if they
13 so chose. The other two companies came to us and said,
14 We want to negotiate. We didn't hear that from NRG. It
15 was: Here is our bid.

16 So yeah, I think we even talked
17 internally if something fails or falls through, let's
18 talk to NRG, they put forth a good-faith effort, spent a
19 lot of money, a lot of time and effort in it, we should
20 talk to them as well.

21 MR. CHERRY: Forget the location, Sussex
22 County, you had a word in your report for it, the
23 gas-fired unit in Sussex.

24 MR. HOWATT: Oh, we had just injected
1641

1 energy where there was 138 KB line at Nelson Substation
2 just outside of Delmar.

3 MR. CHERRY: Nelson. There is no gas
4 there, though, and yet you had suggested that the price
5 might be in the, I don't know, I think what you said was
6 -- what did you say, 13, \$14 dollars?

7 MR. HOWATT: Thirteen, \$14.

8 MR. CHERRY: Who pays the cost of that
9 gas line? When is that gas line going to be there and
10 how does the timing of bringing gas to that location
11 impact your hybrid proposal? You ducked the question in
12 the report, I noticed, so I am putting you on the spot
13 here.

14 MR. HOWATT: You want to see me duck it
15 again?

16 MR. CHERRY: Yes.

17 MR. HOWARD: What are you laughing
18 about, Tom? Your turn is coming.

19 You know, we are not technical geniuses
20 at Staff. I have to admit, I did not grow up in the
21 generation end of the business. Delmarva has the
22 technical geniuses, okay? We didn't want to go out on a
23 limb and say there is gas running up and down 13, can't
24 we put a little quarter-inch plastic pipe over there and
1642

1 provide enough energy to run this power plant? We don't
2 know these things. You know, you can run a gas turbine
3 on oil. I mean, we have jet engines running all the time
4 on YP4 and different fuel types.

5 There was nothing magical about gas, but
6 gas seems to be the common denominator. And there is
7 some gas available, and it's a question of how much is
8 available and where it is available at. We stayed close
9 to the 13 corridor because we said there is gas running
10 up and down the 13 corridor -- probably not sufficient
11 quantities. But if you had holding tanks or something, I
12 don't know about the technology, but if you had holding
13 tanks where you could take gas off at a lower rate and
14 run it when you needed out for generation. Lots of
15 possibilities, that's why we said negotiate. Let's talk
16 to the people that know these things.

17 MR. CHERRY: You answered my question,
18 Bob.

19 MR. HOWATT: I will get out of the
20 pulpit now.

21 THE CHAIRMAN: I think your question
22 relates to the issue that we will continually grapple
23 with until we get -- I was just picking up on
24 Mr. Cherry's question and what he was driving to get to
1643

1 is cost. And I think it's been stated earlier that
2 that's something that we will need to hone in on in doing
3 a comparison.

4 I think the other point that was being
5 made, if I may, is that there are two other bidders and
6 was consideration given to the fact to give both an
7 opportunity to talk. And to some extent they are
8 yes-and-no-type questions. But here we are.

9 MR. HOWATT: Yes and no.

10 THE CHAIRMAN: Are there additional --
11 do you need further clarification there and if not can we
12 move forward with Delmarva's response?

13 MR. WILSON: Good morning, Madam Chair,
14 Commissioners and State representatives, I'm Anthony
15 Wilson, Associate General Counsel for Delmarva Power. I
16 will be joined today by Thomas Shaw, Executive Vice
17 President and Chief Operating Officer of Pepco Holdings,
18 the parent company, also joining us today is Mark
19 Finfrook, the Director of Management. Mr. Shaw and
20 Mr. Finfrook will address the technical issues.

21 First, let me give a few comments on the
22 RFP process. At the outset, it's important to note that

23 under House Bill 6, which is the Electric Utility
24 Consumer Supply Act of 2006, this Commission and the
1644

1 State agencies have been directed to conduct an RFP,
2 evaluate the RFP and then decide on one of the proposals
3 that's before it. At this point in time, the only
4 proposals that are before the Commission are the three
5 that have been submitted. There is no proposal for a 200
6 or 200 to 300 megawatt wind farm; there is no proposal
7 for a 200 megawatt gas-fired facility in the south. So
8 those proposals are not before this Commission nor have
9 they been evaluated by the Commissioners, or the
10 Commission's independent consultant.

11 COMMISSIONER WINSLOW: Mr. Wilson, will
12 you be kind enough to quote the statutory language that
13 says we are bound to follow that law.

14 MR. WILSON: Okay. The Commission, the
15 Director of the Office of Management and Budget, the
16 Controller General, and the Energy Office shall on or
17 before February 28 evaluate such proposals and may
18 determine to approve one or more such proposals that
19 result in the greatest long-term benefit... And it just
20 goes on from there.

21 Prior to that it says --

22 THE CHAIRMAN: That doesn't say such
23 proposals; you interpret that to be that a proposal
24 cannot be modified and still be a proposal. If it's been
1645

1 modified in any way, according to your understanding it's
2 no longer a proposal?

3 MR. WILSON: Well, that's correct. That
4 would be my view. But prior to that it says as part of
5 the initial RFP process there will be an RFP. The next
6 section speaks the RFP will be issued and bids will be
7 received, and then it talks about evaluating those
8 proposals that come in.

9 So we have some concerns on that.

10 COMMISSIONER CLARK: While we are on
11 that point, Madam Chair, as we sit up here, the State
12 agencies and the Commission, and do our job of evaluating
13 these proposals, I mean we are bound by the statute and
14 probably the most operative language that you left out of
15 that is that DP&L shall enter into such contract and that

16 was the --

17 MR. WILSON: No, we haven't left that
18 out. We have the statute and we have the rules that
19 govern, and DP&L is committed to making sure that we
20 safeguard the interests of our customers. So we will
21 certainly exercise our rights under that.

22 COMMISSIONER CLARK: I'm sure.

23 MR. WILSON: At this time I would like
24 to introduce Mr. Thomas Shaw, our Executive Vice
1646

1 President.

2 MR. SHAW: Good morning. I want to
3 thank the Commission Chair, the Commission Members and
4 other State agencies present for providing me the time
5 this morning to speak and respond to questions.

6 THE CHAIRMAN: Excuse me, we are getting
7 hands in the back again.

8 MR. SHAW: Okay. I will see if I can
9 get a little closer. I also want to make clear that I am
10 not the technical genius that Mr. Howatt was referring
11 to; we have some people that are close to that, but I'm
12 not one of them.

13 I obviously do have several
14 representatives on hand to help me answer any questions
15 you may have. We have all spent many, many months
16 working together, investigating possible solutions to
17 help our customers in Delaware grapple with what is a
18 worldwide issue, rising energy prices. There has been
19 countless hours of research and countless pages of
20 information that have crossed your desks over these last
21 months, so much in fact that I would like to remind all
22 parties how we got to this point.

23 We are here today because Delaware
24 legislators wanted us to investigate what could be done
1647

1 to moderate rising electricity prices. I don't have to
2 remind any of the decisionmakers here how difficult the
3 rate increases we announced last year were for our
4 customers, policymakers in the state and the company. It
5 was as a result of the difficult issue of rising prices
6 that we were tasked to work together to see if building
7 generation in Delaware for Delaware could provide the
8 lowest possible energy prices for Delmarva Power SOS

9 customers. We were also tasked to see if such proposals
10 could stabilize prices and help the environment.

11 As you recall, I was at Legislative Hall
12 back on October 17th when we were all talking about how
13 the bidding process should work and be evaluated. As I
14 said then, we need to be very careful throughout this
15 process to ensure that we are looking out for what is
16 best for our customers and to balance all of the risk and
17 dangers associated with long-term contracts against
18 potential savings for our customers. The Commission and
19 the State agencies worked hard to come up with rules for
20 the generation bidding process. And when those bids came
21 in, both the Commission's and State agencies' independent
22 consultant, as well as our own company consultant, came
23 to the conclusion that none of the submitted bids provide
24 the lowest cost alternative for our customers. None of
1648

1 the parties are disputing that fact.

2 Last month, the Commission's and the
3 State agencies' own consultant said quite clearly that
4 none of the bids on the table provide a compelling
5 choice. These are not words that should launch us on a
6 path that's spending billions of dollars and burdening
7 our customers with higher costs for years to come.

8 Now we have before us a recommendation
9 from the Staff that ignores the very process this group
10 established and creates a new plan that has had no
11 opportunity for thorough analysis or debate. For
12 example, the cost of building a gas plant in an area
13 where there currently is no gas has not even been
14 proposed or evaluated. And I can tell you that I have
15 built gas-fired power plants, and that is a major
16 consideration.

17 The idea that these gas and wind
18 projects must be built together to address reliability
19 issues has also not been substantiated. Even the Staff
20 reliability consultant's report, that many of the
21 reliable assumptions are based on, was shown to be
22 developed on inaccurate information. How many people
23 sitting in this room today would go into a store and buy
24 something, anything, and not know how much that will cost
1649

1 or how long they are going to have to pay for it or even

2 if it's needed to begin with? That is basically what the
3 Staff proposal would have us do.

4 We believe there is a clear, compelling
5 choice before the Commission and State agencies today,
6 that choice is to reject the bids on the table as too
7 costly for Delmarva Power SOS customers and to close out
8 the RFP process. We believe our customers are owed that
9 action. We believe that the debate on ideas such as
10 encouraging renewables, focusing on energy conservation,
11 resolving concerns about reliability, as well as
12 resolving concerns over the new reliability pricing model
13 approved by FERC should all be continued in the
14 Integrated Resource Plan docket that is currently before
15 the Commission. The RFP process itself was never meant
16 to address all of those issues.

17 As I'm sure you are aware, the RFP
18 purpose, as developed in the legislation, is to
19 systematically evaluate all available supply options to
20 ensure that sufficient and reliable resources are
21 acquired to meet customers' needs at minimal cost, a
22 least-cost planning process is the best place to fully
23 vet these issues. Delmarva Power customers want
24 renewable resources and Delmarva fully supports renewable
1650

1 alternatives as long as the cost of such renewable power
2 is borne equally by all of those that would benefit from
3 them.

4 Speaking of renewables, I would like to
5 specifically address wind power for a moment. Much has
6 been written and said about our company's position on
7 wind power. I want to make it clear that we support wind
8 power. In fact, our Integrated Resource Plan included
9 wind as a preferred option. We have stated before that
10 we think wind power can and should be part of the
11 long-term planning process going forward. What we oppose
12 is asking customers, who use just 28 percent of the power
13 that is used in this state, to pay for 100 percent of the
14 wind-farm project that far exceeds the size needed.

15 We also think it makes no sense to have
16 a process that was put in place as a way to lower prices
17 end up with a selection of any bid that would raise
18 prices. We support wind. We oppose this wind power bid
19 because it requires us to buy more power than we need,

20 pay more than we otherwise would, and expose our
21 customers to increased risks for more than two decades.

22 In regards to the Staff's last-minute
23 recommendation of a combination of ideas built around
24 components of various bids, we believe this proposal
1651

1 should be rejected since it ignores the bid evaluation
2 results, it ignores the RFP criteria and proposes
3 unevaluated results. None of the options proposed by the
4 Staff are needed for reliability. The reliability study
5 submitted and relied upon by this Staff as the basis for
6 the recommendations late last week has significant flaws
7 and should not be used for any decision-making purposes.

8 Fortunately, there is a better way.
9 Working together in the Integrated Resource Plan we will
10 be able to provide our customers with the tools they
11 need, through new technology, to help us all manage how
12 we use energy and reduce customers' bills. To further
13 moderate energy prices and enhance reliability, we will
14 plan and build transmission projects and evaluate
15 renewable and generational projects. To get the best
16 solution for our customers, we propose using an RFP
17 process focused on renewable-only energy of appropriate
18 size and appropriate contract term for energy and
19 capacity and renewable energy credits.

20 To provide a short summary of what the
21 company recommends that you do today, let me just say,
22 all of the bids should be rejected, since they will
23 result in significant and irrevocable cost increases for
24 up to 25 years. None of these bids will result in price
1652

1 stability, including the wind bid, because we are subject
2 to the spot market when the wind doesn't blow. Just
3 think about those hot, muggy days we experience, that
4 means that generation isn't available and we have to go
5 into the spot market to purchase backup.

6 In addition, the wind bid includes a
7 clause to allow it to increase its prices a fixed amount
8 each and every year. Delmarva Power customers, who
9 account for only 28 percent of the energy used in
10 Delaware, would be forced to pay the higher prices for
11 projects that potentially will benefit all of Delawareans
12 and not just Delawareans but other people on the

13 peninsula as well.

14 The company proposes that you not except
15 any of the RFP bids and that you close the RFP process
16 down. Direct your Staff and the other parties to
17 continue to move forward to evaluate the many
18 alternatives through the IRP process. Link the ongoing
19 effort the State has evaluating the appropriateness of
20 regulation versus deregulation into our Integrated
21 Resource Planning process. We encourage you not to rush
22 into decisions that will impact the state for years to
23 come. Reject the current bids, they are not the right
24 path for this small segment of Delmarva customers. Allow
1653

1 the relevant debate on all the other issues to continue
2 in the IRP process. This state deserves to have the time
3 needed to discuss alternatives and assure the right steps
4 are taken for our future. That position is -- I haven't
5 had that much time to read the report that was referred
6 to earlier, it was just issued yesterday by the
7 Controller in M&B's office, that is not inconsistent with
8 what we understand is contained in that report. We don't
9 agree with everything in that report, as a matter of
10 fact, we would take some issues with some of the things
11 that are interpretations of our position, like portfolio
12 management; we haven't really been asked to answer that
13 question. But anyway, the State deserves the time needed
14 to discuss alternatives and assure the right steps are
15 taken for our future.

16 Thank you for allowing me the
17 opportunity to address all of you today and for all of
18 the work that has gone into helping Delaware meet its
19 energy needs.

20 THE CHAIRMAN: May I ask a question or
21 two?

22 MR. SHAW: Certainly.

23 THE CHAIRMAN: You talked about an
24 alternative RFP for renewables only. Are you taking
1654

1 in-state or out of state? I don't know that we have a
2 resource in-state so I am assuming you are talking about
3 RFPs from out of state.

4 MR. SHAW: My opinion, and what I think
5 is the final decision on that should be worked through

6 the IRP process, but I would highly recommend that it
7 contain bids from out of state as well. That's part of
8 the issue with the bids that we have here today. They,
9 by the nature of the way the legislation was designed --
10 and this was obviously for generation, not just for
11 renewables, were focused on in Delaware. As Mr. Howatt
12 pointed out, we are part of a regional grid in a regional
13 market. And to limit choices in Delaware, while I
14 understand there is a tendency to want to control things
15 in regards to the State's best benefit, but the reality
16 is the energy resources are regional and the least
17 expensive and in some cases the most environmentally
18 beneficial may not be in this state.

19 THE CHAIRMAN: Let me just observe that.
20 I'm not sure that some of my thoughts are driven by a
21 tendency to control as much as my knowledge about what is
22 happening in the larger market, and it triggers some
23 question in my mind about what are we saying when we talk
24 about cost and pricing, because, on the uncertainty side,
1655

1 of what we are talking about with these bids, it appears
2 to be equally a problem for me from the market side. We
3 currently, as you know, have a proceeding going with
4 respect to the effectiveness of the market monitoring
5 that's supposed to guard against manipulation that has a
6 price tag, which we all know from California, of course.
7 There is also the introduction of RPM, barely got in the
8 door and we saw one 1220 percent increase in capacity
9 cost. And while that's only a small percentage of the
10 cost of energy as it grows, the cost of energy gross.

11 We also have an undecided organization
12 in PJM about back-bone transmission. We don't know -- I
13 mean, they are still working out what the elements of
14 that back bone will be. And you have the Department of
15 Energy, national corridors, and we don't know what is
16 going to be decided as to which they are, all of which
17 will impact these extension lines which would include
18 MAPP. We also have possible generation retirement. I
19 understand Oyster Creek is one, there is the Basley and
20 something else down here on the southern end, and how
21 that impacts the overall system, reliability reaction
22 time. We have carbon regulation coming in the door,
23 which is RGGI, and possibly even the federal government

24 taking action. And then we have natural gas volatility
1656

1 which we have seen it's affected by weather, it's
2 affected by other conditions.

3 So I guess when we talk about the
4 uncertainty of the path we are traveling, that's balanced
5 against what I see as a list of uncertainties in the
6 existing structure. So I am lost as to understand how
7 this, we establish that this is a higher price -- and
8 this is on both sides, even in terms of Staff's
9 evaluation. How we talk about pricing when there are so
10 many uncertainties in the pricing of the market in which
11 we are currently functioning.

12 COMMISSIONER CLARK: Madam Chair, as a
13 follow-up on that, too, I mean, I don't know if there is
14 anybody here that a year and a half ago or two years ago
15 -- at least I foresaw that with the RPM model, I mean,
16 that that would have increased capacity charges 1,220
17 percent. That was from my layperson's perspective just
18 changed with a rewrite of the rules at PJM. So we can't
19 forecast for that.

20 So I think your point is good with
21 regard to a lot of uncertainty in the market, as there is
22 some uncertainty in what we are reviewing here.

23 MR. SHAW: Let me respond because there
24 are clearly a number of uncertainties, but what we

1657

1 know -- okay? And this is in regards to in-state
2 generation versus the regional market and so on. What we
3 know is any form of generation, except that which is
4 renewable, you have to import the energy anyway, whether
5 it's coal, oil, gas, it has to be brought into the state
6 by either rail, pipeline, if it's electric, by wire.
7 It's been proven that by wire is the most efficient and
8 reliable. The exceptions obviously are renewable.
9 Obviously, there is some sunshine, some water power, if
10 you would, but it's very limited and very expensive.

11 That brings us to wind. We do have, you
12 know, wind here in Delaware that comes from the state or
13 on shore. The issue with that is you can't count on it.
14 You can't store the electricity in any significant
15 amount, and the wind may not be blowing when it's needed
16 the most. Quite frankly, when it really is those, that

17 hot, humid weather, that we are all familiar with -- what
18 makes it hot and humid? There is not usually wind. So
19 you have to have adequate backup, which means you go back
20 to standby generation, which is either fossil-fuel fired
21 or nuclear, depending on where you are. So you can't
22 depend on even the resources that Mother Nature does give
23 us here in the state.

24 So what you have to look at is what are
1658

1 the most reasonable alternatives? Because there are very
2 few certainties in life -- death and taxes, I have been
3 told. So what you have to do is take what is really the
4 most realistic approach. And I think that, by going
5 through an Integrated Resource Planning process that does
6 take some of the recommendations that I understand are in
7 that report, and we work together and look at all of the
8 resources that might be available, probably have some
9 additional RFPs, including renewable, including specific
10 generation, and the various options for who builds that
11 should be looked at. And then we would have a much more
12 complete picture.

13 Right now my concern is -- and this was
14 out of necessity, I realize, you know, those rate shocks
15 were a concern for everybody, but I think in some regards
16 we have got the cart before the horse. We have to really
17 pick a destination from a state standpoint -- and, again,
18 we only serve part of the electric customers in Delaware,
19 but pick a destination that we think, we the public
20 policymakers and the public, think is the best overall
21 direction, but it's not these three bids.

22 So that's why we recommend that the
23 Commission close this process out. It doesn't mean that
24 down the road we wouldn't negotiate, but we don't want to
1659

1 negotiate with these bids. They are not right for our
2 customers.

3 THE CHAIRMAN: Commissioner Clark.

4 COMMISSIONER CLARK: Mr. Shaw, one point
5 you make is good and I think something we really have to
6 consider --

7 MR. SHAW: I'm glad one is good.

8 COMMISSIONER CLARK: You refer to the 28
9 percent of the energy used essentially going to

10 subsidize, if some of these models are correct, a premium
11 over what the market is going to be. What percentage of
12 Delaware's ratepayers -- isn't it closer to 40, 45
13 percent when you look at that?

14 MR. SHAW: Actually, if you look at
15 customers, it's 260, 270,000, so percentagewise from a
16 customer's standpoint, it's pretty large. But you have
17 to remember, each one uses a little. And many of these
18 customers -- the reason it's them is because the bigger
19 customers have exercise choice. They have the
20 negotiating power and the ability to do that. Many of
21 these 270-some-thousand customers don't have the ability
22 to choose because of credit-worthiness, economic issues,
23 things of that nature, and that's who this would be
24 putting this on the back of.

1660

1 COMMISSIONER CLARK: I just think that's
2 something that we do certainly need to consider as we go
3 through this. We have a situation where the
4 municipalities, the co-op folks that aren't -- if you are
5 looking at doing this for purposes of gaining a societal
6 benefit for the whole state, you have less than the
7 entirety of the ratepayers in the state paying for that.

8 MR. SHAW: That's correct.

9 THE CHAIRMAN: And the other issue that
10 is likely to come up at some point is the system benefit
11 component of that. I'm surprised the Delaware Energy
12 Users Group aren't here because if you are dealing with
13 the size of the group we have, the spillover impact on
14 cost goes to some people who are not participants. So I
15 mean, there are a number of considerations.

16 I did want to go back to something that
17 I think you were mentioning, and this is more tied to the
18 IRP. We talked about demand response and the like. One
19 of the things I was recently reading in connection with
20 PJM publications is that most of our large industrials
21 already participate in the demand-response agreements
22 prearranged load shedding, if you will, reduction. So
23 when we're talking demand response, we are talking really
24 about the broader community, maybe the residentials and

1661

1 small commercials, or am I not clear?

2 MR. SHAW: No. I think in general you

3 are correct, that a significant number of the large
4 industrial users, and even some large commercials already
5 participate in demand-response programs.

6 And if you remember, back in the '80s, a
7 significant number of the smaller customers participated
8 as well.

9 THE CHAIRMAN: Right.

10 MR. SHAW: What we are talking about --
11 and this refers to our blueprint for the future, with the
12 new type of meters and an automated meter information
13 system where you connect the meters into an intelligent
14 grid for residential and small commercials, they can also
15 participate or choose to participate. They can opt out
16 probably too, but, yes, that's correct.

17 MR. CHERRY: Mr. Shaw, thank you.

18 When we began this process there was a
19 lot of very close analysis of the legislation and what
20 the criteria were that the agencies were to use in
21 crafting the RFP and subsequently in evaluating it. And
22 a great deal of discussion went into whether price should
23 have been a part of the RFP in the first place at all.
24 It's not mentioned in the legislation, as you may know,

1662

1 price stability is there, environmental factors, all
2 those other factors. And I felt very strongly at the
3 time that price had to be a part of the RFP. It was
4 ludicrous to think that the legislature didn't consider
5 price to be of some importance. And so we put it in the
6 RFP and we gave it 40 points or whatever we gave it. And
7 that, I think, was the right decision at the time.

8 And yet, I have read in the press lately
9 from Delmarva, you have repeated here this morning the
10 words lowest cost. Lowest cost doesn't appear in the
11 legislation. There are some phrases about minimal costs
12 and other things; but, you know, I was raised that you
13 get what you pay for. And I think there is a benefit to
14 getting a little bit more for a little bit more money and
15 getting some green power, some renewables, some non-
16 emitting generation. And so this predication you have in
17 opposition to the bids based on lowest cost doesn't add
18 up in my view.

19 And I wonder if you could comment on
20 your focusing on those words when they are not contained

21 in the legislation.

22 MR. SHAW: I was referring to the IRP
23 process which was historically is a process that was used
24 prior to deregulation, and it typically used the term
1663

1 least cost. I don't disagree that particularly in
2 today's world where we are looking at concerns around the
3 environment, the Chair mentioned carbon taxes, and
4 clearly all of that is going to have to be factored into,
5 so we wouldn't necessarily disagree that factors other
6 than least cost need to be considered; but there were
7 many other factors that weren't considered in this bid,
8 including bids from outside the state. So that's part of
9 how I would characterize that perspective.

10 In the renewable RFP process that I
11 mentioned, I think some of what you are suggesting needs
12 to be considered.

13 MR. CHERRY: And I don't want to argue
14 with you, I think your point is well taken. But
15 Mr. Geddes said at the very outset that we have done as
16 best we can with dealing with the law that was provided
17 to us. And the law is all about in-state generation.

18 MR. SHAW: I understand that.

19 MR. CHERRY: And so that, in my view,
20 constrains our ability to go outside and rebid something
21 out of the region, and it speaks to the necessity to
22 choose from what we have here.

23 MR. SHAW: But if I may elaborate. It
24 didn't say you had to take any of the bids.

1664

1 MR. CHERRY: That is true, also.

2 MR. SHAW: My point is they are not
3 appropriate for our customers. There is a better way,
4 and that's what we are recommending.

5 THE CHAIRMAN: Thank you.

6 MR. SHAW: Thank you.

7 THE CHAIRMAN: Is that the presentation
8 for Delmarva or is there another speaker here?

9 MR. SHAW: Unless you have other
10 questions.

11 THE CHAIRMAN: Are there other
12 questions? No. (No response.) Thank you.

13 There doesn't appear to be any others

14 from the body here -- I'm sorry, you can't hear me again?
15 Forgive me. Commissioner Winslow said I can sit on his
16 lap, but I was afraid that might get published.

17 (Laughter.)

18 Anyway, I do believe it's appropriate to
19 remind you -- I don't know that we want to break just
20 yet, but considering lunch is only going to be available
21 in this building from 11:30 to 1:00, I will certainly
22 take thoughts if you want to take a break now before we
23 go to the bidder responses so people can have lunch.
24 Because there is quite a sizeable number, I think we
1665

1 might need to take the whole time. And we will take a
2 break now, have lunch and we will start again at 1:00.
3 One minute, before you leave person.

4 FROM THE FLOOR: All I'm going to ask it
5 said on this right here, is a 60-day delay in you making
6 a vote?

7 THE CHAIRMAN: I'm sorry?

8 FROM THE FLOOR: I can't do anything
9 unless you agree to sign a confidential agreement. It
10 had to do with health issues.

11 THE CHAIRMAN: I'm sorry, who are you,
12 please?

13 FROM THE FLOOR: Pardon?

14 THE CHAIRMAN: Who are you?

15 FROM THE FLOOR: Basically what Delmarva
16 wanted, they wanted more renewables, reliable ways of
17 energy here in the State.

18 MR. BURCAT: You will have an
19 opportunity to talk later.

20 THE CHAIRMAN: We are just taking a
21 break here.

22 MR. SHAW: Madam Chair, I just wanted to
23 mention, I do have copies of my remarks if you would like
24 them.

1666

1 THE CHAIRMAN: I certainly would
2 appreciate having a copy.

3 If I may continue, we are going to take
4 a break now, and we will reconvene at 1 o'clock.

5 (A lunch recess was taken at 11:37 p.m.
6 until 1:00 p.m.)

7 THE CHAIRMAN: Okay, are we ready to
8 proceed? I am. There is a slight change from what I
9 said earlier. The Public Advocate has asked to be moved
10 behind the presentations we have thus far, and then we
11 will move to the bidders, and then to public comment, if
12 you don't mind. So with that, I am going to ask, is it
13 you, Mr. Citrolo, who is speaking for the Public
14 Advocate?

15 PUBLIC ADVOCATE CITROLO: Yes.

16 THE CHAIRMAN: Okay. And of course, if
17 you can't hear me in the back, remember, put your hand up
18 and I will sit on Commissioner Winslow's lap.

19 PUBLIC ADVOCATE CITROLO: Good
20 afternoon, and thank you for the change in order.

21 As I was preparing my inspirational
22 presentation this morning and looking around at the
23 collegiate atmosphere and the parquet floor and some of
24 the '60s decor and now that I stand here with a hip
1667

1 pointer and a torn ACL I am starting to feel more like
2 Gayle Sayers.

3 When we started these proceedings last
4 summer, I was very excited for some personal reasons
5 with the aspects of this case, especially around the new
6 energy source theme that's mentioned throughout the
7 statute. However, I was reminded by Mr. Padmore, the
8 Public Advocate -- who is actually appearing at
9 Legislative Hall right now, and that's why he is not
10 present at this moment -- but we are chartered by the
11 General Assembly to represent Delaware consumers without
12 passion or prejudice, for the lowest reasonable rates,
13 quality of service, and service adequacy.

14 If I stood before you here today out of
15 passion, I would tell you that I do not need expensive
16 consultant reports and the data that the federal energy
17 regulatory commission has, the analysis they do or the
18 analysis that PJM does or even the National Energy
19 Reliability Counsel. My father spent 35 years doing
20 research and development of alternative renewable energy
21 sources at for the generation of electric power at
22 Princeton University. A lot of dining-room-table
23 discussions along the way with regards to renewable
24 energy. It wasn't nuclear fission, it's not

1668

1 incineration, the sun, the wind, and even the moon as
2 fuel sources. Also, my father-in-law is in his 19th year
3 as sitting utility regulatory commissioner, and I often
4 hear him say, I hate when the Public Advocate says that.

5 With no disrespect for the consultant
6 and all the reports, usually a half a bottle of single
7 malt Scotch gets me a lot of the insight that these
8 reports have presented to us sitting on my back patio.

9 I want to share with you, before I go
10 into my comments, one piece of insight that I think is
11 very relevant to what --

12 THE CHAIRMAN: You can invite me over,
13 by the way.

14 PUBLIC ADVOCATE CITROLO: Yes. And in
15 this proceeding, I made sure I had plenty.

16 One thing that I was reminded of early
17 on in this proceeding is a story that my father shared
18 with me from the late '80s. He was giving a presentation
19 at the Ernest Orlando Lawrence Laboratory at Berkeley,
20 and in his presentation he had casually mentioned the
21 estimated exhaust rate of an electric power fuel source
22 of approximately 250 years. The U.S. contingent at this
23 meeting, presentation, kind of drew a sigh of relief, he
24 said. The folks -- and these were scientists and other

1669

1 environmental groups and things like that -- from
2 Germany, Japan, they responded by saying, We better get
3 going on finding something else then.

4 And that's what I think it's possible we
5 need to look out beyond 25 years in this case when you
6 make your decision. It might be a little short-sighted
7 to just consider the next 25 years on what we could be
8 doing here. Nevertheless, I did reference all the
9 reports in preparing our comments, the data. I'm a
10 voting stakeholder at PJM, I'm there a lot. I am aware
11 of the planning process and those types of things whether
12 it's for generation capacity or transmission planning and
13 those types of things.

14 I also wanted to thank Staff and
15 recognize them, I think the effort has been tremendous
16 throughout this proceeding, Mr. Howatt especially and I
17 know Ms. Dillard has spent some weekends doing some work.

18 I know we say that every proceeding, but I really mean it
19 this time.

20 Earlier Mr. Howatt alluded to Staff
21 making some of its own interpretations and its own
22 estimations, and that's similar to what we did at the
23 DPA. I think maybe this time we go with our gut a little
24 bit, we answer our own questions. We may have to adapt,
1670

1 we may have to improvise, we may have to do things that
2 we would not normally do in our course of action with
3 traditional utility regulation. And as I stated earlier,
4 being chartered with, advocating for lowest reasonable
5 rates, that doesn't always mean we are here for the
6 lowest rate sometimes. You have experienced that in the
7 past with us. I am the deputy for the Public Advocate's
8 Office. I have a charter to uphold, and we do that with
9 the utmost integrity.

10 I also live in this state. I swim in
11 our lakes, I swim in the ocean. I hike on the trails, I
12 bike on the roads. And at 220 pounds, yes, I do eat in a
13 lot of the restaurants here. The point is that I am
14 outside a lot. And the Gayle Sayers' reference earlier
15 wasn't by accident, you can watch Brian's Song. And I
16 realize how important our lungs are, so quality of air I
17 think is certainly something that we all consider, and
18 sometimes regardless of the rate.

19 So I think in our comments, and I'm
20 going to summarize them for you. I think we struck a
21 good balance between getting something out there
22 affordable to folks, a couple of conditions as well as
23 the long-term environmental benefits that the statute has
24 asked us to look at.

1671

1 The first thing that we talk about in
2 our statute is recognizing that we don't think the
3 General Assembly, by passing the Energy Utility Retail
4 Customer Supply Act should make customers worse off than
5 they are now. We do have an SOS bidding process. The
6 Public Service Commission has found it to be in the
7 public interest, Staff, the DPA, Delmarva Power & Light
8 and some suppliers, we've all worked to get that process
9 in place. And we feel it still does serve the public
10 interest. And we presented some evidence in our comments

11 to show that it seems reasonable to conclude that that
12 process has given us below-market rates. You are saving
13 money over the market by staying with the SOS provider
14 right now for the residential customer class.

15 Washington Gas Energy Services does have
16 a product that's palatable for two reasons other than
17 price, one is they do offer a 5 percent wind-fuel mix for
18 their base plant, as well as long-term security they are
19 selling. You can sign a two-year or three-year contract
20 with them for a fixed price. I think the exit fee is
21 \$75. It's about, depending on summer, winter rates you
22 look at for the typical customer you are probably saving
23 about 8 percent staying with the SOS provider right now.

24 But it is reasonable to expect that if

1672

1 you execute an above-market contract, migration will
2 increase. Putting upward pressure on stranding cost,
3 putting consumers on risk to the nonbypassable surcharge
4 that the statute mentions that this Commission or this
5 body can put in place to stabilize that migration.
6 Therefore, we have concluded and asked you to recognize
7 that the current process is serving the public interest.
8 However, it certainly makes sense under the IRP section
9 of the statute, the Integrated Resource Plan, to look at
10 long-term environmental benefits, system adequacy for
11 Delaware and a mix in our fuel source. There is not
12 necessarily a need to immediately stabilize prices that
13 the RFP section suggests, but perhaps the other benefits
14 in the IRP section of the statute is something that we
15 need to take a look at.

16 Thus, we are asking a new generation
17 should be considering response to adequate concerns to
18 deliver power to Delaware customers, if any, diversify
19 Delaware's fuel mix, and bring long-term environmental
20 benefits to Delaware. In view of that, only one bid can
21 be considered, and that's the bid submitted by
22 BluewaterWind. It's the only renewable source that will
23 diversify our current fuel mix of almost 90 percent coal
24 and nuclear and bring the long-term environmental

1673

1 benefits to Delaware, I mentioned that earlier perhaps
2 looking out beyond past 25 years.

3 I want to mention one exception we did

4 take to the consultant's report about executing a
5 contract with the wind provider outside of Delaware. We
6 don't believe that that's a substitute for executing a
7 contractor with BluewaterWind. The reason is -- well, it
8 seems that if we were to do that, a wind provider outside
9 of Delaware, the benefits of having a renewable source
10 would go to someone else, and we may be paying a premium
11 for that. At the same time, perhaps someone else's load
12 would generate traditional fossil-fuel generation in our
13 state, giving us the emissions, while we are paying for a
14 renewable benefit that someone else is getting.

15 Within the same context, the DPA
16 believes that if the State agencies, this body,
17 determines that it is best for Delaware to execute
18 power-purchase agreement with BluewaterWind, that any
19 premiums in price and our stranded cost created due to
20 the potential of migration will be borne by all Delaware
21 electric customers, including municipal and Delaware
22 Electric Cooperative customers. I was reluctant in
23 making that recommendation; however, as I think you are
24 all aware now, the municipals have already agreed
1674

1 indirectly to be part of the renewable project such as
2 BluewaterWind, and I think that goes a long way with
3 minimizing some of our stranded costs. At the very
4 least, it would spread it out among more people, this
5 premium, if it's five or ten dollars a month that we may
6 be paying. And I think the statute recognized this, that
7 nonbypassable surcharge says everybody is kind of in this
8 together with retail choice, so if something starts to
9 undermine our default provider, we are going to get a
10 mechanism in place to take care of that. So I don't
11 think it's a huge stretch to include those customers.

12 And as I mentioned earlier, it would
13 certainly be the dubious outcome of paying for renewable
14 out of state and then for some reason the load growth
15 that has forced more emissions while we are paying to not
16 have any somewhere else.

17 I know you all have these comments, I am
18 only trying to highlight the key parts of it.

19 The DPA supports the Sustainable Energy
20 Task Force initiative to create the sustainable energy
21 utility. If only parts of these conservation goals are

22 reached, much, if not all, of the alleged new generation
23 needed for system adequacy would be negated for Delaware.
24 However, the DPA believes that using renewable energy
1675

1 sources in conjunction with a sustainable energy utility
2 will better diversify our fuel mix as well as lessen our
3 demand for fuel source, price-volatile fossil fuels, such
4 as natural, gas, oil, and coal, an immediate price
5 stability and long-term environmental goals of the act.
6 The sustainable energy utility will not only conserve
7 energy but overall --

8 THE CHAIRMAN: Are you reading from what
9 you wrote?

10 PUBLIC ADVOCATE CITROLO: Yes. Some of
11 it I am.

12 THE CHAIRMAN: Why don't you just turn
13 us to the page?

14 Somebody up there has their hand up.
15 They can't hear you or me, for that matter.

16 PUBLIC ADVOCATE CITROLO: I will just
17 conclude with our recommendations, if you rather, which
18 are also in our comments, I can conclude with that. I
19 was doing it for the benefit of some of the folks that
20 these comments weren't served on.

21 THE CHAIRMAN: Very thoughtful.

22 PUBLIC ADVOCATE CITROLO: Do you want me
23 to read them?

24 THE CHAIRMAN: It's getting to conclude,
1676

1 that's where I am trying to go.

2 PUBLIC ADVOCATE CITROLO: I will go
3 through our recommendations.

4 Obviously we, as I stated earlier, we
5 are recommending that to secure the power-purchase
6 agreement with BluewaterWind with the statements I
7 mentioned earlier, our comments including the municipal
8 customers, as well as a competitive pricing clause in
9 there to allow some renegotiation to better market the
10 purchase that will help minimize the forecasted \$2
11 billion above-market price that we would be paying.

12 And just lastly, I guess our
13 recommendation about not delaying further. We don't see
14 any further insight or anything that could be gained by

15 waiting and just urge you to go ahead and make the
16 determination quickly.

17 If you have any questions, certainly.

18 THE CHAIRMAN: Are there any questions?

19 (No response.)

20 None. Thank you, Mr. Citrolo.

21 Now we will go to the bidders and less I
22 be accused of favoritism, I am using the alphabet and
23 that starts with BluewaterWind.

24 MR. McGONIGLE: Good afternoon, Madam
1677

1 Chair, Commission members, representatives of the four
2 State agencies. My name is Tom McGonigle with the law
3 firm WolfBlock, representing BluewaterWind.

4 I also have with me today the President
5 and CEO of BluewaterWind, Peter Mandelstam.

6 First, let me say thank you to each of
7 you for the opportunity presented today and the multiple
8 opportunities we have been afforded throughout this
9 process.

10 I start by saying we strongly support
11 the Staff recommendations as embodied in the May 2nd
12 report. We believe the report lays a strong foundation
13 for a path forward. With the Chair's permission, I would
14 like to turn it over to Peter Mandelstam of BluewaterWind
15 to make a short presentation on why we think the Staff's
16 recommendations should be adopted. After Peter
17 concludes, I want to make a few comments on the process,
18 the legal process that we have here today, and the
19 implications of that process.

20 With that I, again, introduce Peter
21 Mandelstam, President and CEO of BluewaterWind. Peter.

22 MR. MANDELSTAM: Madam Chair, members of
23 the Commission, State agencies, and the public in
24 attendance today, BluewaterWind and I are delighted to be
1678

1 here before you. It's been nine months since we had the
2 opportunity to introduce you to the great potential and
3 benefits of offshore wind. We think this is a great
4 opportunity and a great project for all Delaware.

5 Since that time my team has been working
6 nonstop in Delaware to understand this process to provide
7 thousands of pages of material, to share this information

8 with the public, with all the stakeholders, and to
9 address questions about this exciting technology.
10 Offshore wind has been generating electricity in Europe
11 for 15 years. Though it's new in the United States, this
12 is off-the-shelf traditional technology in Europe.
13 Delaware has many reasons to embrace this clean, stable-
14 priced energy. This is going to be a great project for
15 Delaware. Wind can work exceptionally well for Delaware.

16 Let me say for the record that we
17 believe that BluewaterWind fulfills all the requirements
18 of House Bill 6 and the PSC order. Wind can provide
19 price stability. Our proposed project will save
20 ratepayers money. We believe, and we believe we have
21 demonstrated, we will save ratepayers money over the 20-
22 to 25-year term of the power purchase agreement with
23 Delmarva Power. Carbon taxes will indeed be imposed.
24 The only question is: How high will these taxes be? How

1679

1 high will these taxes be for fossil-fuel generators? How
2 high will these taxes be to be passed through to Delaware
3 ratepayers? Wind, of course, has no such liability.

4 The higher they go, the more an offshore
5 wind project will save ratepayers money. Our fuel, the
6 wind, is free and we will know on day one each and every
7 hour, and the ratepayers will know exactly what their
8 cost of power will be for those megawatt hours that we
9 deliver into the grid. Wind protects the environment.
10 We have got excellent scores, excellent reviews and
11 comments from the public and from the independent
12 consultant. But let me say, no emissions, no pollution.

13 Since the wind park will be at least
14 seven miles from the shore, there will be no interference
15 with major bird flyways, the Audubon and other national
16 groups have endorsed us. Our turbine bases will serve as
17 artificial reefs. We've had meetings with DNREC and the
18 federal officials. This is well known in Europe that the
19 artificial reefs will serve as a boon for recreational
20 and commercial fishermen. We think this will be a great
21 thing for Delaware.

22 As we learned from the leaders of Danish
23 towns we met with, and some of whom came here to Delaware
24 recently, this will be a tourist attraction. Though they

1680

1 will hardly be visible from the beach, people will want
2 to go see them. And we are confident -- in fact, we have
3 already gotten calls from tour boat operators who want to
4 come and lead tours to the wind farm.

5 Wind provides jobs, 500 full-time, good,
6 well-paying construction jobs when we are building the
7 park; 80 to 100 full-time, year-round jobs for operation
8 and maintenance. I am proud to say that these are union
9 jobs. It's been a pleasure to meet with Delaware's union
10 leadership, and we look forward to working closely with
11 them in the building and operation and maintenance of
12 this project.

13 Wind works for Delaware because it will
14 spin the turbines 85 percent of the hours of the year.
15 We have demonstrated and provided lots of comments -- and
16 I won't go into it now -- about it's benefit time during
17 the summer, during the peak hours. We were asked this
18 question and we answered this question. Approximately 85
19 percent of the key summer hours in PJM, 2:00 to 6:00 in
20 the afternoon, from June 1 to August 31st, we will be
21 delivering some power into the system. I won't go on
22 about this, but let me say that Bluewater has provided
23 detailed hour-by-hour production forecast. We want to
24 work with Delmarva when we get in a room to talk about
1681

1 how our wind farm can be a good neighbor on their system.
2 Of course, the wind won't blow all the time. When the
3 wind is calm, there's clearly enough power in the grid.
4 You won't sit in the middle of PJM, the largest
5 electricity control area in the world, there is plenty of
6 power in this system to be able to provide. The lights
7 will not flicker, the air conditioners will continue to
8 hum on the hottest of days.

9 In Denmark, 22 percent of electricity
10 generation comes from wind. There are no grid problems
11 there. Throughout Europe, 17, 20 more percent of the
12 various countries have wind, there has never been a
13 problem with grid stability because of wind. There are
14 lots of studies in New York and other places about the
15 reliability and the benefits to the grid of wind power.
16 Again, we filed comments on this.

17 I know that we can satisfactorily
18 address Delmarva Power's concerns because other utilities

19 around the country, and 60 million people worldwide, get
20 the equivalent of all their electricity from wind power.
21 There has never been an outage due to a wind farm in the
22 world; 60 million people, 74,000 megawatts, there has
23 never been a problem.

24 This is exactly the kind of issue that
1682

1 we want to discuss with Delmarva Power. Wind developers
2 and utilities do this every day, they have done this
3 thousands of times in the U.S. in the last 15 to 20
4 years. We get in a room, we work out the technical
5 issues. We present to a body, such as yourself, the
6 results of our negotiations. We understand they have
7 questions, Mr. Shaw has raised some here now. Please
8 keep in mind that we have not been allowed to speak to
9 them since the summer of 2006 under your own guidelines.
10 We welcome an opportunity to get in a room with them, to
11 talk bout details, to understand what their concerns are
12 and we are confident that we can address their concerns
13 and be flexible.

14 We have already negotiated with
15 utilities before in Montana, and we can do it here in
16 Delaware. We look forward to showing them how flexible
17 we will be. We really want to show them that we have a
18 willingness to compromise and come up with a good project
19 for Delaware. We are highly confident that the outcome
20 that is in the best interest of Delaware, ratepayers, the
21 company, and all the other parties will be reached.
22 Evidence of this, of course, is reflected in the deal we
23 have made with DEMEC, the nine municipalities have said:
24 We want wind. They have looked at this deal. They

1683
1 looked at the details. They have understood how it fits
2 on their system. We want wind. We think that's a great
3 badge of honor for this project. We hope we can go
4 forward and with Delmarva and with DEMEC.

5 Please allow Delmarva customers to
6 derive the same benefit that DEMEC customers, the
7 opportunity to direct discussions with Delmarva to
8 resolve these differences.

9 We are nearing the end of House Bill 6
10 process. It's been hard. It's been hard on the State
11 agencies. We want to thank them in a heartfelt way. We

12 know how much work they have done because we know how
13 much work we've done in producing the documents which
14 they have to comment on. It's been hard on the bidders.
15 It's been hard on the public. They've devoted countless
16 hours, they don't get paid for this, to submit comments,
17 to come to hearings. You've all spent countless hours
18 hearing them and of course hearing BluewaterWind.

19 The next decision, though, is easy. Let
20 BluewaterWind negotiate with Delmarva Power. Let us see
21 what we come up with. There is really nothing to loose
22 because you the Commission the three State agencies have
23 the final approval. You have done the hard work. Now
24 you can await the outcome of the negotiations and the
1684

1 proposed power-purchase agreement. That power-purchase
2 agreement will result in an offshore wind park that will
3 protect the environment. Help in the fight against
4 climate change, which I believe is the most important
5 issue facing us, and Delaware as a low-lying state is
6 particularly susceptible to sea level rise. That wind
7 project will provide jobs. That wind project will keep
8 the lights on. There will never be a grid issue. We
9 have successfully done this on land, and we are now
10 proposing with our world-class team of consultants,
11 developers, Fluor and Vestas, the largest and the second
12 largest companies in the world in their divisions, with
13 this world-class team of offshore wind developers we are
14 prepared to build this project off your coast.

15 Let me conclude, BluewaterWind's
16 off-shore wind park will provide stable price,
17 emission-free energy that will save ratepayers money over
18 the course of the contract to the great and lasting
19 benefit of the people of Delaware.

20 Thank you very much for your
21 consideration and your time. We urge strong support for
22 the Staff recommendation. Thank you all.

23 THE CHAIRMAN: Before you sit down, I
24 have a question.

1685

1 MR. MANDELSTAM: Please.

2 THE CHAIRMAN: With respect to the 85
3 percent of the time the wind is on, and you mentioned
4 that there is plenty of energy on the grid.

5 Are you suggesting as an alternative
6 that Delmarva buy power off the grid versus the
7 alternative that Staff proposed, which would be to have
8 reactive energy closely available to wind?

9 MR. MANDELSTAM: Madam Chair, you ask a
10 very good question. It's a very technical question, and
11 it's a question we have begun to look at. I wouldn't
12 presume to answer it now other than to say that when we
13 get in a room with Delmarva, we presume that other
14 experts will be involved in these negotiations, some
15 independent negotiator, we want to address that issue.
16 There are very good electric answers to that issue. The
17 WorldPower report that was issued recently went to this
18 issue. There are PJM studies. There are very good
19 answers. I wouldn't presume to try to answer it now.

20 But I would think if one gets in the
21 room and adopts the big-funnel approach, we can be
22 flexible, Delmarva can be flexible, and you can review
23 this to understand what is best for the system.

24 THE CHAIRMAN: Commissioner Winslow.
1686

1 COMMISSIONER WINSLOW: The State's
2 proposal is to limit your facility. Are you going to be
3 able to do that if in fact that occurs?

4 MR. MANDELSTAM: Well, Commissioner, as
5 you know, we bid 12 different scenarios of 12 different
6 outputs. We prefer flexibility, we understand, and
7 Delmarva understands, that whenever you negotiate between
8 a generator and a utility, there are a lot of issues. So
9 we would prefer not to prejudice that issue, to get into
10 a room with flexibility to try to understand what is
11 best. Obviously, by the laws of economics, if you build
12 a smaller project, prices go up. There are certain break
13 points in building of a wind farm because of the
14 mobilization cost. We think it's best to get in a room
15 and try to understand what those are.

16 So that the answer to your question is
17 at some price, perhaps, but I think it's best to maintain
18 the flexibility. And you pioneered that issue at the
19 beginning of this process with the big funnel, and we
20 really salute you for that.

21 COMMISSIONER WINSLOW: I appreciate
22 that. I can't take credit for that. I take credit to my

23 lawyer colleague, who represents in such a fine fashion
24 the Staff, and, of course, it may not have been his idea,
1687

1 either; it may have been the Staff.

2 MR. MANDELSTAM: I stand corrected.

3 THE CHAIRMAN: Now that we got the
4 credit straightened out, I move over to Commissioner
5 Clark.

6 COMMISSIONER CLARK: Thank you, Madam
7 Chair. One concern I've got, with some of the models and
8 the predictions, you include predictions that your
9 facility would cost a premium to the SOS ratepayer. I
10 mean, I know that's not your position, but are you able
11 or at liberty to discuss what the nature of your
12 contingent contract is with the municipalities because if
13 they were on board with this, that would certainly go at
14 least -- I mean, that would mitigate that concern to some
15 extent, I'm not sure how much, but it would mitigate it.

16 Can you tell us about where you are as
17 far as a contract with them and what the nature of that
18 contract is?

19 MR. MANDELSTAM: Yes. I'm bound by laws
20 of confidentiality with DEMEC and, obviously, there are a
21 great number of parties on the other side, but let me
22 tell you what has been released. We have said that we
23 will sell more than 100,000 megawatt hours of power, as
24 available. And, of course, they were premising this
1688

1 purchase on the bid to DEMEC, which means that in the
2 hours -- I'm sorry -- to Delmarva, in the hours when
3 Delmarva does not want the power that excess power, as
4 available, would go to DEMEC. More than 100,000 megawatt
5 hours per year, it's a 20-year term, and the approximate
6 value to the project is somewhere in the neighborhood of
7 \$300 million. The exact pricing we have not released.

8 I can certainly discuss with DEMEC and
9 their board about doing that in some either open or
10 confidential way. Certainly BluewaterWind is in favor of
11 openness, but I want to stress that this is power that
12 Delmarva did not want. When wind developers usually bid,
13 utilities usually want every megawatt hour they can
14 produce. This is the power that under the bid was excess
15 so this is power that DEMEC would be buying.

16 COMMISSIONER CLARK: Following up on
17 Commissioner Winslow's question, you would not be opposed
18 to negotiating a scaled-down version of the DPA with
19 them to the extent that Staff --

20 MR. MANDELSTAM: No person likes to
21 negotiate against himself, so we would like to maintain
22 flexibility. The laws of economics suggest that at some
23 price almost anything can be done. So we would like to
24 maintain flexibility.

1689

1 COMMISSIONER CLARK: That answers my
2 question. Thank you.

3 THE CHAIRMAN: I have to also commend
4 Mr. Mandelstam for not asking questions. It's been
5 several months. How long has it been?

6 MR. MANDELSTAM: I learned from you
7 Madam Chair, I am much more restrained.

8 THE CHAIRMAN: I have to say it's
9 unusual.

10 MR. MANDELSTAM: A taste of things to
11 come over the next several years, I hope, Madam Chair.

12 MR. CHERRY: The Minerals Management
13 Service will have something to say about any offshore
14 activity such as yours. Can you elaborate for us what
15 you think the timing of the Minerals Management Services
16 new regulatory development process is that would govern
17 this and how that impacts your project?

18 MR. MANDELSTAM: Certainly. The
19 background, the Energy Policy Act of 2005 shifted the
20 lead agency status of review of structures on the outer
21 continental shelf from lead agency, Army Corps of
22 Engineers, to lead agency, Minerals Management Service.
23 They are in the process of issuing their final
24 regulation, and there is a programmatic EIS now on the

1690

1 streets. We've submitted voluminous comments to you, in
2 fact, the MMS consultant singled out TetraTech for the
3 thorough job that they did. We have been deeply engaged
4 with MMS, and under the timeline we presented to you MMS
5 will have finished their work, process their application
6 in time for us to mobilize and deliver the project as we
7 have promised.

8 So don't we believe there will be any

9 delay in the construction of the Delaware project because
10 MMS, technically speaking under the law today, is behind
11 their own congressional schedule, in fact, their
12 congressional mandate to promulgate their final regs.

13 But, nonetheless, we are confident we
14 provided this in our bid that we'll be able to do it
15 within the time necessary.

16 MR. CHERRY: Did your bid include any
17 costs for lease sales to MMS?

18 MR. MANDELSTAM: At present, there is no
19 suggestion that there will be royalty payments.

20 Nonetheless, in our financial model, deep in it, which
21 your consultants presumably saw, we have allowed for a
22 small royalty payment to the federal government. We
23 anticipate there will be some small amount. And, Yes,
24 under the current pricing to you and the other State

1691

1 agencies, we are able to absorb that cost.

2 MR. CHERRY: Thank you.

3 THE CHAIRMAN: Mr. Scoglietti.

4 MR. SCOGLIETTI: Thank you, Madam Chair.

5 Peter, just a quick question. Because
6 the DEMEC thing came up pretty quickly. Without showing
7 your hand or getting into any detail, are there other
8 opportunities like that that you are currently working on
9 in that volume, in that range, without getting specific?

10 MR. MANDELSTAM: Right. I will give you
11 a very full answer, which is that every wind developer
12 always looks for as many as possible offtakers. Delmarva
13 is an offtaker, DEMEC has now said they will be an
14 offtaker. We have reached out to all the usual suspects.
15 And as I said to members of the press and other people
16 that asked me, if there were another offtaker, you would
17 have heard about it. That's not to say that someone
18 won't come forward, but at present these are the
19 offtakers that we have been able to reach agreement with.
20 And there are no current offtakers for energy that we are
21 in negotiations with. Obviously, we welcome the world to
22 come forward. And we think that a vote by you folks will
23 spark interest in players, perhaps, within Delaware or
24 outside of Delaware to want to buy some of this power,

1692

1 but at present there is no one else.

2 COMMISSIONER CLARK: Just a follow-up to
3 Mr. Scoglietti's question.

4 It's a firm contingency contract you
5 have with MMS at this time?

6 MR. MANDELSTAM: We have executed an
7 agreement which says that if the wind farm, if the
8 contract is signed with Delmarva, they are bound under
9 the terms of that agreement to go forward and sign a
10 contract with us to buy the power that we produce, the
11 excess power that we are not selling to Delmarva under
12 the bid that we submitted.

13 COMMISSIONER CLARK: It's much more than
14 an agreement in principal, it's a firm contract with that
15 contingency?

16 MR. MANDELSTAM: Enforceable in a court
17 of law, absolutely.

18 COMMISSIONER LESTER: Would it be
19 possible to know what the size of the wind farm is, total
20 megawatts?

21 MR. MANDELSTAM: Yes. We have bid 600
22 megawatts of name plate capacity, and we have said and we
23 believe and you've all opined on this issue and we have
24 discussed this issue, without inflaming anyone to my
1693

1 right or to my left, we believe that the bid was -- and
2 we have presented 12 different bids -- but we believe
3 that the bid requested of us is up to 400 megawatts at
4 any given hour.

5 Nonetheless, we remain flexible and we
6 hope Delmarva will remain flexible that we can get in a
7 room and work out the best project at the best size and
8 the best price for all of you.

9 THE CHAIRMAN: Somehow that up to pieces
10 have gotten lost and I have seen it in various
11 communications and I thought the bid did specifically say
12 up to, as you have stated.

13 MR. MANDELSTAM: We believe that that
14 was requested. But, again, we want to remain flexible.
15 Thank you, Madam Chair.

16 THE CHAIRMAN: Any other questions? If
17 not, okay.

18 MR. McGONIGLE: Thank you, Peter. I
19 want to make a few closing points, if I could, on the

20 process in terms of what's at stake here today and
21 perhaps, more importantly, what is not at stake here
22 today.

23 There have been a number of media
24 reports and submissions that have, frankly, overstated
1694

1 the importance of a decision today to adopt the Staff's
2 recommendation. Simply put, today is not the day that
3 you folks are being asked to decide whether Delmarva will
4 embark upon securing new electric generation capacity.
5 The only thing you are deciding today is whether to
6 require Delmarva to negotiate with Bluewater and
7 Conectiv.

8 Essentially, Staff is recommending that
9 you move forward today so that you have an opportunity
10 down the road to properly consider whether we as a state
11 should secure new generation. House Bill 6 established a
12 two-prong decision-making process, with the first
13 decision being whether or not to direct negotiations, and
14 the second being to be review and possibly approve the
15 results of those negotiations. As such, voting today to
16 adopt Staff recommendations in no way dilutes or takes
17 away the power and authority of the four State agencies
18 to ultimately decide this critical issue. Each agency
19 will have a full opportunity to review, study and vote on
20 any proposed contract that comes out of these
21 negotiations.

22 Now, while the consequences of adopting
23 the Staff's recommendations are not that significant or
24 as significant as maybe has been presented by the folks
1695

1 in the media, the ramifications of stopping this process,
2 as Delmarva would want you to do, are very significant.
3 For one, there seems to be almost universal acceptance
4 that Delaware needs to pursue a portfolio approach to our
5 energy supply strategy.

6 In short, we need to diversify. There's
7 been two separate Governors' task forces, independent
8 consultant, Staff for the Commission, who have worked on
9 these issues for years and have tremendous expertise, all
10 have reached this conclusion. Yet, Delmarva relies on
11 securely nearly all its SOS electric supply requirements
12 from the regional wholesale market and has shown no

13 willingness to alter this strategy. As Staff has
14 properly concluded, maintaining the status quo presents
15 enormous risks for our state.

16 Now, given the current legal framework
17 of House Bill 6 and the electric deregulation that came
18 before, you have a limited opportunity to possibly
19 address this risk. It is within the purview of the RFP
20 provisions of House Bill 6, and only within those
21 provisions, that we as a state can force Delmarva to
22 mitigate this risk.

23 In other words, if this process is
24 terminated, as Delmarva would like you to do, the State
1696

1 loses its ability or its leverage, if you will, to deal
2 with this in a meaningful way.

3 Second, close to \$1 million has been
4 spent by the State to get to this point. My client alone
5 has spent over \$2 million, including many valuable
6 studies that showed the way in terms of this important
7 alternative energy source. Thousands of hours have been
8 invested by Staff, the Commission members and the State
9 agencies, hundreds of Delawareans have engaged in this
10 process and have provided valuable input, but we are not
11 yet in a place where a proper, informed decision can be
12 made. That needs to happen after negotiations.

13 So if you think about this decision as a
14 balance between the pros and cons, it's really not that
15 hard of a decision. In approving the Staff's
16 recommendation, you give the State of Delaware the
17 opportunity to consider possible solutions to a serious
18 problem that everyone, save Delmarva, recognizes exists.
19 In so doing, you preserve your legal authority to do
20 something about this problem should you think that the
21 solutions presented after negotiations are viable. And
22 you in no way preclude your ability to preserve the
23 status quo, as you can do that later by simply rejecting
24 the contracts that are proposed. There is no downside to
1697

1 moving forward.

2 In closing, if we are given this
3 opportunity, BluewaterWind will work diligently in those
4 negotiations, and we are very confident that we will
5 provide good solutions for your consideration. As such,

6 we respectfully request that you allow yourselves, on
7 behalf of our state, the future opportunity to fully
8 consider these solutions by voting to approve the Staff's
9 recommendations. Thank you.

10 THE CHAIRMAN: Conectiv? Is there
11 someone from Conectiv?

12 MR. PURCELL: Madam Chair,
13 Commissioners, other State agencies, Staff, my name is
14 Richard Purcell, I am the manager of the Conectiv Energy
15 proposal that has been presented. I want to thank you
16 for the opportunity to present our bid and, also, the
17 opportunity to speak with you for a moment today.

18 We are pleased that the PSC Staff
19 recognizes the value of natural gas power generation in
20 meeting Delaware's future energy needs. We recognize
21 that this is an issue that must be resolved between the
22 State agencies and Delmarva before we can add any further
23 significant material to this process. We are willing to
24 explore and discuss alternative ideas.

1698

1 We must emphasize that the PSC Staff's
2 recommendation is not the proposal that we had submitted.
3 The specific recommendation does not represent the
4 information that we had presented. However, we have not,
5 and I might add, that we have not studied that specific
6 proposal. There are some changes in the characteristics
7 of generation that they have asked for and also a change
8 in location. To build a power plant, generally several
9 things are needed. Of course, land, access to fuel,
10 access to adequate water, and access to adequate
11 electrical transmission. We know that we have set these
12 things in proper proportions at our proposed location at
13 Hay Road. We have not studied these for any other site.
14 However, we very much look forward to working with you
15 and Delmarva and others in going forward in the future.
16 Thank you.

17 THE CHAIRMAN: Well, thank you.
18 Commissioner Clark.

19 COMMISSIONER CLARK: Just a direct
20 question: The Staff's recommendation is that you be
21 asked to sit down and negotiate with Delmarva regarding
22 siting at a different location -- well, you have
23 obviously read it, you are not opposed to doing that?

24 MR. PURCELL: No, sir, we are not. We
1699

1 look forward to the negotiations.

2 THE CHAIRMAN: Mr. Cherry.

3 MR. CHERRY: I understand that what has
4 been proposed wasn't necessarily what you bid, but in
5 your original bid with respect to carbon dioxide, you had
6 suggested that Conectiv was prepared to -- I don't know
7 the exact phraseology you used, but you were going to
8 cover, if you will, your CO2 obligation under RGGI, up to
9 a certain dollar amount, per ton.

10 Would the same approach hold for
11 something else that you've negotiated? I mean, I lose
12 control, if you will, over the CO2 that you had put in
13 your original bid when there is a new bid at play here,
14 and I am just trying to get some feedback from you as to
15 how you would treat carbon dioxide in, essentially, a new
16 bid?

17 MR. PURCELL: Yes, sir. I believe what
18 we said in our original proposal was we would cover the
19 cost of carbon dioxide up to whatever RGGI required. And
20 anything above that, we would negotiate that.

21 MR. CHERRY: Not to interrupt, but
22 without any pass-through charge to ratepayers?

23 MR. PURCELL: Up to whatever RGGI
24 required, that's correct.

1700

1 MR. CHERRY: Okay.

2 MR. PURCELL: In looking at a new
3 facility, in a new location, with new characteristics,
4 for instance, synchronous condensing and so forth. When
5 you use a facility like that, there may be some
6 characteristics of the design of the facility that may
7 change. And there may be -- you know, the emissions
8 levels, if the design of it changes, may also change. I
9 think that's something that we would have to look at in a
10 total package. Certainly, we would not be opposed to
11 trying to follow the same path or we would not have
12 presented it to begin with.

13 But I really can't answer that question
14 until we sit down and negotiate the characteristics of
15 the plant. We would then come up with a design of the
16 plant and go forward.

17 MR. CHERRY: I appreciate that
18 uncertainty on your part, but I am searching for some
19 commitment that we get the same kind of CO2 deal that we
20 got with the Conectiv original bid.

21 MR. PURCELL: We would certainly try to
22 do that, but that's not something that I could stand here
23 and commit to today until we go through negotiations.

24 MR. CHERRY: Thank you.

1701

1 THE CHAIRMAN: Well, I certainly
2 appreciate the approach that you take because the fact
3 that was the whole new -- it was new to all of us, not to
4 say that it's not a good idea, but I certainly can
5 understand that it has ramifications that we might not
6 necessarily fully comprehend at this point. And I
7 anticipate that before any complete resolution of that
8 proposed Staff recommendation is addressed by the
9 Commission fully, you know, we would have to see, you
10 know, what came out of those negotiations. So I am still
11 understanding that our process here is looking at go
12 negotiate, if that's what we decide, and I hear you
13 saying that you are willing to be one of the negotiators,
14 you, Conectiv.

15 MR. PURCELL: Absolutely.

16 THE CHAIRMAN: Very fine. Okay. Any
17 other questions? Thank you.

18 MR. PURCELL: Thank you.

19 THE CHAIRMAN: And now we have NRG.
20 Do I hear a phone? \$10, \$10. We have
21 already eaten lunch. Allen Muller, I want the \$10.

22 MR. HOUGHTON: Madam chair, it was not
23 me.

24 Madam Chair, members of the Commission,

1702

1 representatives of various State agencies, I am Michael
2 Houghton, Delaware counsel for NRG from the firm of
3 Morris, Nichols, Arsht & Tunnell.

4 I wanted to thank all of you for
5 allowing the bidders to address the Commission and the
6 agencies today. This has been -- I think it's fair to
7 say -- a very interesting, very unusual, unprecedented
8 and apparently still a very fluid process. And it has
9 been certainly unprecedented in my experience with the

10 State, with the Commission and the various agencies
11 involved.

12 My role today really is to simply
13 introduce to the commission Caroline Angorly, who is the
14 Senior Vice President of the northeast region of NRG and
15 ask her to address the Commission and the agencies on
16 NRG's process and the path forward. Thank you.

17 MS. ANGORLY: Commissioners and State
18 agencies, thank you very much for the opportunity to
19 address you today. I'm somewhat excited by this because
20 sitting through all the town-hall meetings where Mr.
21 Burcat and Mr. Bonar were about to tackle me to make sure
22 that I wouldn't speak that I now actually do have an
23 opportunity to speak.

24 THE CHAIRMAN: That can't be true.

1703

1 (Laughter.) There is an audience listening.

2 MS. ANGORLY: So with all the pent-up
3 demand to be able to put our case to you, I have
4 necessarily been selective given the time constraints we
5 are under and the part of the process that we are in.

6 I am going to address three major points
7 today: One is the Staff recommendation. Secondly, a
8 reliability and execution risk. And the third is
9 fairness in Delaware benefit. But before I get into the
10 substance of that I heard something very interesting in
11 the earlier presentations that I would like to respond to
12 and that was very clear invitation, I believe, by
13 Mr. Howatt to flag NRG's great interest in wanting to be
14 at the negotiating table with Delmarva and the other two
15 bidders.

16 I can honestly say that our prior
17 experience of RFP and bidding processes is that people
18 guard very jealously the process and the integrity of the
19 process, and oftentimes if you are seen to make a phone
20 call to PSC to say, We are interested in playing this
21 game too, in something that looks a little bit different
22 from the actual RFP process is set out, I have been
23 involved in procedures where bidders have been expelled
24 or where they have been severely penalized.

1704

1 So what I would like, certainly, this
2 panel to take away from our apparent lack of interest in

3 doing that, is that it wasn't indicating a lack of
4 interest at all. It was indicating a play-by-the-rules
5 concern, that we didn't want to fall afoul of that. For
6 the record, I would like to state that NRG is extremely
7 interested in being at the table to provide firming power
8 to any BluewaterWind bid. We are a company that
9 obviously has great experience in all different types of
10 generation technologies. So we can provide firming power
11 from natural gas and, as has been pointed out earlier, we
12 actually do have the plant in Sussex County where that
13 could take place or we could firm it with, frankly, IGCC.

14 With that out of the way, that important
15 matter of business: First addressing the recommendations
16 that the Staff recently put forward. The Staff
17 apparently has decided to put aside the agreed-upon
18 evaluation and decision process which reflects the EURSCA
19 or the HB 6 and instead has made a creative and
20 unilateral decision that frankly, in our view, while we
21 appreciate the creativity really exceeds the scope of
22 HB 6. The rationale, we feel, that was laid out in the
23 report underlying that decision is inconsistent and
24 unclear. And this emerging of a brand-new option is
1705

1 somewhat unexpected.

2 The hybrid recommendation that Staff put
3 forward is not really based on the six factors outlined
4 in HB 6 for assessing the bids in terms of utilizing new
5 or innovative baseload, that provide long-term
6 environmental benefits, utilizing existing
7 infrastructure, provide fuel diversity, and there were a
8 number of others.

9 As we previously noted, and I'm not
10 going to drag everybody through it in great detail, but
11 we believe there were fundamental flaws in the RFP
12 evaluation process. So we don't defend or support the
13 result of that flawed process. In terms of the principal
14 defects that we believe exist was that a test bid was
15 never run. It was noted from the outset that a test bid
16 would ensure fair and equitable treatment of all bidders,
17 and would allow the evaluators to gain a perspective on
18 the process and to verify the consistency, efficiency,
19 and reasonableness of the modeling methodologies and the
20 input assumptions. And frankly, all of that remained a

21 black box to the participants in the process.

22 In addition, the independent consultant
23 had stressed that assumptions and methodologies must not
24 contain undue biased toward any one resource. Yet, in
1706

1 spite of its value in policing that process, the test bid
2 was never run. In addition, the bid evaluation scoring
3 system was excessively focused on price, such that any
4 heavily capital-intensive project was going to be placed
5 at an extreme disadvantage. And that's contrary to the
6 innovative baseload criteria that's found in HB 6.

7 The bidders were awarded points in
8 respect of the price evaluation in a winner take all,
9 loser take nothing scenario that reinforced the bias
10 against more capital-intensive projects.

11 The scoring and points awards in the
12 non-price factors section appeared arbitrary and,
13 frankly, in many instances, biased. And we remained
14 concerned at NRG that the true value delivered by each
15 project proposal in real world constructs is not
16 reflected in the evaluation. And just one gut check on
17 that is how can a project that is fueled by natural gas,
18 which is the most expensive and highly volatile fuel
19 input to electric new generation, actually produce a
20 project that is more price stable than a coal project?
21 Again, the gut check says that that's not quite right.
22 And that's an example of why we have some disquiet with
23 the evaluation process.

24 Further, we think that it's
1707

1 fundamentally unfair that even though Staff and the
2 independent consultant, for that matter, recommended that
3 none of the bids be accepted as proposed, that NRG is
4 precluded from negotiating with Delmarva in that
5 recommendation in spite of the fact that IGCC, as we have
6 proposed it, clearly meets the factor articulated by the
7 General Assembly, particularly in terms of innovative,
8 baseload technology, long-term environmental benefits to
9 the state.

10 NRG's IGCC proposal is more than a new
11 generation proposal like the other two bids, it is an
12 effective overall plan to transform one of the state's
13 most reliable but, frankly, old energy generation sources

14 into a streamlined, reliable and efficient IGCC facility
15 with massive -- up to 90 percent -- reductions in current
16 emissions from that site. If taken in context with the
17 retirements of units 1 and 2 and the addition of
18 innovative of clean coal technology, the net effect on
19 Delaware's environment could be greater than other bids,
20 especially when factoring reliability in.

21 Thought of a different way, our IGCC
22 proposal, if it's not part of the solution, then Delaware
23 is still left with an aging traditional coal-fired plant
24 and the environmental profile that goes along with that.

1708

1 The IGCC facility that we have proposed also has existing
2 fuel and transmission infrastructure and it utilizes an
3 existing ground fuel site, other HB 6 criteria.

4 It promotes fuel diversity, especially
5 as the innovative technology gives NRG the option of
6 selecting the cheapest fuels based on America's most
7 abundant and stably priced fuel: coal. The IGCC
8 facility is, frankly, the only proposal that on its own
9 will support or improve reliability in the state.

10 From Senator Clinton to New York State
11 to MIT and other environmental groups and governments --
12 NRDC is an example -- they see and they have been very
13 public about seeing IGCC with carbon capture and
14 sequestration as we proposed it, as the next generation
15 of power plant. And it's able to balance key energy and
16 environmental policy imperatives.

17 Yet, Delaware has a view that runs
18 counter to all a these other thought leaders, and I leave
19 that question with you: What is it that other people are
20 seeing that is not being fully reflected in the
21 evaluation process that has gone on in the RFP?

22 Moving to the question of reliability
23 and execution risks. NRG's Indian River plant is
24 recognized under the RFP process, the PowerWorld analysis

1709

1 and the Staff's report and recommendation as a very
2 reliable source of baseload energy generation for
3 Delaware. That's not in question. The only way Staff
4 can find its way to embrace the hybrid proposal is to
5 recognize that a scaled back wind proposal can only be
6 viable if somehow firmed by a fossil generator to answer

7 the question: What happens when the wind doesn't blow?
8 But the hybrid is really neither contemplated nor
9 permitted, we think, by HB 6, which has the State
10 choosing bids from those that were actually submitted
11 based on the structured evaluation criteria, not
12 constructing new proposals.

13 And an NRG project -- even potentially a
14 scaled-back IGCC -- is as reliable if not more reliable
15 than Staff's hybrid. And the IGCC, specifically and
16 significantly improves, both the environmental and
17 efficiency profiles of an existing generating facility.

18 IGCC, despite what you've heard at
19 various times in this process, is not novel. It's not
20 unprecedented. It's not some crazy Science experiment.
21 It's tried and tested technology. We have some here in
22 the United States. We have them in Europe.

23 Similarly the carbon capture and
24 sequestration phase, none of this is a bright idea that
1710

1 is untested. All of the components of the NRG IGCC
2 proposals involve elements that exist commercially today
3 and that have been used successfully in the refinery
4 industry, the oil and gas industry, and the power
5 industry for many, many decades.

6 In short, we believe that NRG's IGCC
7 proposal alone or as a support, frankly, to a wind
8 project that can be executed and can be delivered that
9 NRG is capable as a company, with an international record
10 of accessing major financing, of developing projects,
11 implementing projects on time, on budget, and operating
12 them efficiently. We believe that NRG's project -- and
13 this is important -- has radically less execution risk.
14 Even if the independent consultant identified that the
15 actual likelihood that the BluewaterWind project would
16 get done was somewhat slim, what is the point of going
17 through the process that we have all been through to end
18 up with a feel-good recommendation for a project that
19 likely will not get implemented as proposed and will not
20 actually deliver the benefits that have so captured the
21 public debate?

22 The question to ask is, I guess, will
23 hope of the ideal outcome keep Delaware cool on those
24 hot, still summer days or relieve the increased costs

1711

1 that come from pulling power from the market in periods
2 of high demand?

3 Moving finally to fairness. Staff's

4 acceptance of seven elements which are not the same as
5 the HB 6 criteria to develop this hybrid bid result is an
6 impermissible, brand-new proposal, and is premised on a
7 perceived public referendum endorsing renewables. And as
8 we understand it, that's not what the RFP process was
9 designed to be. It ignores the benefits of facilitating
10 the closure of the older units at Indian River, and it
11 ignores the significant benefits of improving efficiency
12 at that site while implementing innovative baseload
13 technology.

14 But what is probably most troublesome is
15 that the Staff hybrid selects two of the bidders to
16 attempt to negotiate with Delmarva -- and excludes the
17 largest, most likely candidate to successfully negotiate
18 and acceptable PPA with Delmarva -- NRG. We have an
19 existing facility in the fastest growing county in
20 Delaware, and which -- unlike Conectiv -- we want to
21 build more environmentally sound capacity in Sussex
22 County and that's what we bid.

23 The question I ask you is: Why aren't
24 all the bidders chosen to negotiate if they can for the

1712

1 sale of an agreed amount of power to Delmarva? That's
2 the only fair, if a new ad hoc process is put into place,
3 that all the players who put in bids at the front end are
4 at the table.

5 Even under this ad hoc process with
6 Staff purporting to substantially analyze the bid, Staff
7 recommended considering the bids within the context of
8 super categories, favorable characteristics like project
9 viability and economics, and each super category is
10 weighted equally at 33 percent. Under Staff's ad hoc
11 scoring methodology, Conectiv's proposal received 7
12 points, BluewaterWind, 6 points, NRG, 5 points, in what I
13 would call, given the process we have all been going
14 through, too close to call. While NRG contests and has
15 contested the underlying point allocation system that the
16 independent consultant and ICF used perform forming the
17 basis of this Staff ad hoc scoring, NRG believes that

18 even the Staff scoring demonstrates that it is too close
19 to call, and that having all parties at the table to
20 negotiate with Delmarva is the right response.

21 So even if the State agencies decide to
22 go with the Staff's recommendation, and the firming
23 solution proposed is gas, but it's in Sussex County, it's
24 not the Conectiv proposal outside of Wilmington. So

1713

1 therefore we would say to you that NRG ought to be given
2 an opportunity to talk to the parties about that and to
3 bid for that firming solution, since the hybrid proposal
4 is in effect a new plant.

5 NRG, as I said, has a site in Sussex
6 County already. You can't regard the Conectiv bid for
7 repowering Hay Road as transferable to an as yet
8 unidentified brownfield or greenfield site on the
9 peninsula. What is to say that NRG would actually not be
10 more competitive with the gas-fired proposal located at
11 Indian River? That's a possibility.

12 So to finish where I started, fairness,
13 equity, and public interest demand that there be a
14 competitive bid process between NRG and Conectiv at the
15 very least on the Sussex County combined cycle gas plant.
16 If there is going to be any digression from the process
17 set out to explore a hybrid or other solutions, Delaware
18 benefits by having NRG at the table. We have the site.
19 We have the financial and technical ability to be
20 competitive, and we can apply our skills across many
21 generation technologies, including natural gas, wind and
22 IGCC.

23 I thank you for the opportunity.

24 THE CHAIRMAN: I think you make a very

1714

1 good point. I recall in our earlier discussions, and I
2 am expecting the Staff ultimately will address some of
3 the comments that you raised which I think are deserving
4 of a response. I recall in the earlier discussions
5 around the bid process that NRG had a size issue,
6 minimum-size requirement, which in the conversation under
7 the hybrid is substantially different, and yet I hear you
8 saying that by some means you are willing to accommodate
9 that kind of consideration. Maybe if you could just
10 elaborate a little bit more on that for me.

11

12 MS. ANGORLY: Sure. When we started
13 this process I think initially people remember that
14 Delmarva was offering 200 megawatts. Everybody agreed,
15 through the RFP process, to 400. We, with an IGCC
16 facility, 600 is an optimal size. And on this, this may
17 be the point of agreement that NRG has with BluewaterWind
18 that there are certain scale economies. So 600 is an
19 optimal size and so we said 400 into the PPA and we deal
20 with the other 200.

21 Given the way we perceive this process
22 is going and Delmarva and Delaware are looking for
23 greater flexibility in what options are available with
24 the bidders at the table, we are absolutely willing to
1715

1 consider how we might reconfigure that site, how we
2 might, with a reduced PPA, get greater off-take from
3 third parties, or, as I say, if the State agencies wish
4 to proceed with this idea of natural gas as the firming
5 agent for a wind plant, then obviously that's a different
6 point altogether.

7 THE CHAIRMAN: Um-hmm. Well, of course
8 it does add an element to the discussion, for sure.

9 COMMISSIONER WINSLOW: The Indian River
10 plant, what states does that serve electricity to, so to
11 speak?

12 MS. ANGORLY: We like to talk about it's
13 at the end of the pipe on Delmarva Peninsula. So it's in
14 eastern PJM, but the reality is because of its electrical
15 location, the bulk of the energy it supplies is to the
16 benefit of Delaware. And when you read, like, the
17 PowerWorld study and there have been -- a PJM reliability
18 study came out recently, this electrical location at the
19 end of the pipe is actually quite critical to ongoing
20 system reliability. So it's not just a matter of saying
21 it's X megawatts that we get in Delaware and whether we
22 get them from PJM or we get them from generation sources
23 located in Delaware, it doesn't matter. It actually
24 does.

1716

1 THE CHAIRMAN: Oh, that's helpful. That
2 sounds a little different from something I heard earlier
3 today. Okay. Are there questions?

4 MR. CHERRY: Caroline, welcome.

5 MS. ANGORLY: Thank you.

6 MR. CHERRY: You had your chance.

7 MS. ANGORLY: Yes.

8 MR. CHERRY: I want to thank you and NRG

9 and everyone for putting forth an innovative bid and
10 thinking IGCC and thinking about improvements at the
11 Indian River Power Plant. That has not been lost on the
12 Department of Natural Resources. I might add, for the
13 record, that in '03, I think it was, when Governor Minner
14 stated in her state of the state address that she was
15 looking for reductions in emissions for power plants,
16 we've got NRG, we've got Conectiv, and a couple of other
17 smaller ones, NRG was the only one that stepped forward,
18 came to the Department of Natural Resources and started
19 talking to us about reducing emissions. We were sharing
20 with you at the time our intent to do a Multi-P
21 regulation, to address the shortcomings we found in the
22 federal environmental statutes for units 1 through 4. We
23 had some good discussions. They didn't really end up
24 anywhere at the time, but that was a year fully before
1717

1 the RFP came out. And even at that time you were talking
2 about IGCC as the possible solution.

3 So I applaud you for thinking that way
4 and for working with us, trying to address what is
5 clearly a problem down at Indian River, and that's the
6 emissions. And that's what we are interested in. I
7 think that's what the legislation speaks to, about
8 reducing environmental emissions.

9 All the same, NRG ranked third out of
10 three, and for a lot of reasons that we don't need to
11 repeat here. My question, though, gets to -- I am
12 seeking clarification on something I heard previously
13 from NRG, and that was with respect to our Multi-P rule,
14 it's no secret we promulgated the regulation, all of the
15 folks that are subject to that regulation, at least,
16 again, the big ones, Dover, Conectiv, NRG have appealed
17 that regulation. My understanding from testimony, if I'm
18 not mistaken, from NRG, that NRG's concern with that
19 regulation wasn't so much the requirements that it put
20 but the timing that it placed on those requirements. Is
21 that still correct and is it your recollection?

22 MS. ANGORLY: Yes. It's not only my
23 recollection because it's something I am living every
24 day. And I am glad you asked that question because this
1718

1 is an issue that the State agencies have heard a lot
2 about, and I know it exercises a lot of people. And I
3 would like to draw a distinction, that when legal
4 challenges of any sort are launched, it's customary for
5 the lawyers -- so, again, I can blame Mr. Houghton for
6 this, it's not me.

7 THE CHAIRMAN: We know him. We know
8 him.

9 MR. HOUGHTON: Thank you.

10 MS. ANGORLY: That you put into your
11 statement of claim everything including the kitchen sink,
12 because you don't want to stub your toe on some
13 technicality. And so the papers that have been filed in
14 the challenge that NRG amongst the other two generators
15 that you identified have lodged with the environmental
16 appeals board reads like it has the kitchen sink in it.
17 And some people have alleged, in this process actually,
18 that NRG has lied, which is something I take extremely
19 seriously. I take it seriously from a corporate
20 integrity standpoint, I take it extremely seriously from
21 a personal integrity standpoint. And what we have done
22 is that we filed the technical claim that we needed to
23 file, but really our issue is about, man, we know that
24 the engineering procurement and construction market and
1719

1 the vendor market is very, very tight at this moment in
2 time and out a number of years to put back-end
3 environmental controls on. And we know if we started
4 today, we could not get those back-end controls on in
5 time to meet the requirements of the two phases of the
6 Multi-P rule.

7 So this is not a question of, boy, we
8 don't want to spend the money and put these controls on.
9 We have been planning to spend hundreds of millions of
10 dollars at the existing plant to put back-end controls
11 on, but we want to do that in a regime that we've agreed
12 with DNREC that we will meet their requirements, and we
13 are all also able to secure that in the outside world.
14 We don't want to promise to DNREC something that we know

15 we can't deliver in terms of what the market for back-
16 end control is.

17 MR. CHERRY: Thank you. Let me just
18 follow up with that. Do I understand, then, that to the
19 extent that the IGCC plant were to get the nod, units 3
20 and 4 would still require controls per the Multi-P rule.

21 MS. ANGORLY: We are subject, at all of
22 our plants, you know, present and future, to Delaware
23 regulation, and we comply with those regulations to the
24 letter. Today, as I stand here, we are in compliance
1720

1 with applicable environmental regulations.

2 MR. CHERRY: Understood.

3 MS. ANGORLY: But you are right, as
4 those regulations change, part of the challenge of my job
5 is to make sure that we remain compliant.

6 MR. CHERRY: Were the costs at all for
7 the Multi-P compliance for 3 and 4 included in the bid
8 price at all?

9 MS. ANGORLY: No.

10 MR. CHERRY: Thank you.

11 THE CHAIRMAN: The charges were not
12 included. Does that mean we would see them at some
13 future point?

14 MS. ANGORLY: It's the back-end control
15 technology that would be required by the Multi-P would be
16 like any other business situation that NRG would be
17 making, DNREC has a very elaborate process, which is
18 unfolding, where a compliance plan has to be filed at the
19 end of next month, when some detail about exactly what we
20 are proposing when and where. Not part of the RFP
21 process, though, to give you a short answer.

22 THE CHAIRMAN: Okay. My principal
23 concern is where are those costs moving in this whole
24 discussion?

1721

1 MS. ANGORLY: That's one thing you don't
2 have to worry about.

3 THE CHAIRMAN: That's good. One less
4 thing. Are there further questions? Ms. Cohan.

5 MS. COHAN: Thank you, Madam Chairman.

6 Caroline, actually your comments are
7 very encouraging and maybe we should have let you speak a

8 little earlier in this process.

9 We met with our legislative leadership

10 last Thursday once the Public Service Commission Staff
11 made their recommendation which, in essence, is another
12 bid in this process and your lack of inclusion in that
13 was noted at that leadership table. And what I want to
14 make sure I understand about you are stating here is if
15 you are willing to sharpen your pencil and go back and be
16 included in these negotiations even if proposal ends up
17 looking like something a little different?

18 MS. ANGORLY: Right. Because we are a
19 generation company, and that's what we do. And so, if
20 the decision is made by the State agencies that you want
21 some aspect of wind, but you want it firmed by fossil,
22 for all the reasons that have been highlighted today, we
23 think we can provide the competitive solution for that.

24 MS. COHAN: Thank you.

1722

1 THE CHAIRMAN: Thank you.

2 Now we are moving to public comment.

3 And let me just take a moment. It looks like we have
4 quite a few commenters. Understand our three-minute rule
5 is in effect. One good thing is Tom Shaw is on this and
6 he has already spoken and McGonigle is on here, so we may
7 not be as long as I thought. Ted Janeko. I guess Ted
8 Janeko is not here. Then we have Jim Black.

9 MR. BLACK: Thank you. Jim Black with
10 the Clean Air Council of Delaware.

11 I just wanted to address a couple of
12 things that were brought up today. One was about market
13 pricing and all this talk, everything being dependent on
14 price. Market price by itself will not serve the public
15 interests, because the lowest cost plants do not meet the
16 new health and environmental standards. They are
17 currently fighting these new standards that DNREC has
18 implemented last year. There has also been talk about
19 the conservation and reductions achieved through that.
20 Though the Clean Air Council strongly supports the FEU
21 and its goals of conservation and decentralized
22 generation capacity; however, there are no states that
23 have actually achieved reductions in demand through this
24 type of project. And, at best, they have slowed growth.

1723

1 This is something that we need to do, but it's not going
2 to get us where we need to be by itself.

3 Also, about pricing and considering new
4 generation, I keep thinking it's kind of like you are
5 buying a new car, you don't know what the price of
6 gasoline is going to be in the future; but when you are
7 going out and shopping for a car right now you are
8 probably going to select one that is more fuel efficient,
9 less polluting because it is more efficient. And in the
10 long run you just trust that that's going to be a good
11 investment.

12 It's kind of the same way with the
13 project we have got here. We have got something that may
14 cost us more up front, but in the long run it's going to
15 give us price stability, so it should save us money in
16 the long run. But even if it doesn't save us money in
17 the long run, it's going to save us in environmental and
18 health impacts that we all pay for. You know, we don't
19 see that on our electric bill, perhaps we should.

20 And, then, as far as when wind not being
21 available all year-round, there is a small wind farm in
22 Atlantic County, the ACUA wind farm, it's very small, but
23 in their first 365 days of operation they generated
24 electricity 364, and the one day they missed was because
1724

1 it was too windy because of a storm, so they had to shut
2 down. So that's not far from here. The wind resource
3 off the Delaware coast should be better than an onshore
4 facility like they have in Atlantic County.

5 Delmarva's representative today from
6 Pepco Holdings suggested that none of the bids were to
7 his liking, not being in the interest of his customers.
8 I would really like to know -- maybe some day they could
9 write up the bid for us that would be to his liking.
10 What would it take? Because I and my staff, we have gone
11 through the state and we have talked to over 1500 of his
12 customers and they love the BluewaterWind bid, that's
13 what they want. They are Delmarva's customers. We have
14 been talking to them directly. They want the Bluewater
15 Wind bid.

16 COMMISSIONER WINSLOW: Mr. Black, that
17 was three minutes. Thank you.

18 MR. BONAR: That was two minutes.

19 MR. BLACK: Thank you.

20 THE CHAIRMAN: The official timekeeper
21 is over there, but he was derelict in his duty.

22 MR. BONAR: Does that cost \$10?

23 THE CHAIRMAN: Let me just make it
24 clear, not that we don't want to hear from the public

1725

1 because we have at every other meeting but, you know,
2 there are a lot of people who want to say things. And I
3 would even say in consideration if there are things that
4 have been said by someone else, there is no real reason
5 to repeat them. So I would suggest we listen carefully
6 to what each person has to say and determine whether you
7 have a comment that is additive. Thank you, Mr. Black.

8 Ellen Leboutitz.

9 MS. LEBOUTITZ: Thank you very much.

10 Just a couple of comments.

11 One major one that I think needs to be
12 stressed is that the health costs that are considered
13 hidden are really major costs, and they have to be looked
14 at, particularly with regard to NRG and Delmarva Power.
15 Carbon taxes are going to be, I think, huge in the
16 future, so what we are looking at is best value. We
17 should be looking at best value and not lowest costs
18 necessarily.

19 I'm concerned about NRG in litigation
20 right now, in cleaning up the current problems down at
21 Indian River. And I just question NRG's intention to
22 work in good faith with Delaware in any future
23 negotiation that was just brought up.

24 Also, I am very concerned about the

1726

1 carbon-dioxide emissions. At the very best, in the best
2 scenario from all that I have read, even with carbon
3 sequestration, which has been an unproven technology at
4 this point, 35 percent of carbon emissions are still
5 going to be going up. And that's considered too much in
6 terms of global climate change. I think that needs to be
7 looked at more carefully.

8 And then finally, I just have a
9 concern -- I'm sure you noticed, that the holding
10 company, Pepco Holdings spoke on behalf of Delmarva Power
11 and its customers. It owns both Delmarva and Conectiv

12 Energy, Conectiv Energy supplies half the power for
13 Delmarva customers under current short-term contracts.
14 So I would just ask the Commission and the other agencies
15 to note that it may be hard for Pepco to separate
16 interests of Delmarva customers from the concern of
17 losing a significant piece of Conectiv power sales to
18 Delmarva.

19 And I thank you very much.

20 THE CHAIRMAN: Thank you.

21 John Flaherty.

22 MR. FLAHERTY: Thank you, Madam Chair.

23 First, in response to Mr. Geddes's
24 earlier comments, I want to thank the Public Service
1727

1 Commission, the Governor's Office of Management and
2 Budget, the Controller General's Office, and DNREC's
3 Energy Office for conducting this process in an open
4 public manner and a manner where the public was allowed
5 to be engaged, involved and freely participate in this
6 long and arduous process.

7 Second, I am here today to express my
8 support for the wind-power proposal.

9 And, lastly, I am concerned about the
10 comments made by DP&L and published in The News Journal
11 papers last Thursday regarding their opposition to this
12 legal public process to negotiate new electric generating
13 sources here in Delaware. Delmarva Power & Light said in
14 part: "Even if the Commission votes to accept the
15 conclusions of the report, Delmarva will refuse to
16 negotiate. We will take any action at our disposal to
17 prevent that."

18 I compare the comments uttered by DP&L
19 to that of a parent at a little league baseball game when
20 the parent realizes their child's team is losing the
21 game, they stomp onto the field and demand the game be
22 played another day with a result more to their liking.

23 As you are aware, the rules for this
24 game were adopted by the General Assembly, through the
1728

1 passage of House Bill 6, sponsored by State
2 Representative Bob Valihura, co-sponsored, among others,
3 by State Senator Thurman Adams, and the entire Republican
4 and Democratic leadership of the House and Senate, and

5 signed into law by Governor Minner on April 6th of 2006.
6 And one of the purposes of this law was a request for
7 proposal through a competitive public process. And I
8 urge that process to continue.

9 And, certainly, one of those
10 cost-effective proposals coming out of this process is
11 wind power. This ongoing legal public process to adopt
12 new generating, electric generating capacity must be
13 allowed to proceed in a fair manner. Special interests
14 should not be allowed to interject themselves in the
15 middle of game, cry foul when they found out they were
16 losing, and attempt to highjack a legal public process, a
17 process supported by our legislator, our Governor, and
18 the people of this state.

19 Earlier Phil Cherry alluded to the
20 Governor's 2003 state of the State speech, which he said
21 in part: We need to have an energy plan that will make
22 us more self-sufficient in a world that sees uncertainty,
23 one that will nurture new Delaware companies that are
24 part of the fast-moving technology changes and one that
1729

1 will provide incentives for homeowners and businesses to
2 take part in the energy transition to renewable
3 products."

4 I agree with the Governor, and I support
5 this process and I urge that this process continue to its
6 logical conclusion.

7 And thank you for your time.

8 THE CHAIRMAN: Thank you. Rob Prozes,
9 P-R-O-Z-E-S.

10 MR. PROZES: I didn't ask to speak.

11 THE CHAIRMAN: I'm sorry, your name is
12 on here.

13 Joseph Dillon, there was no indication.
14 Is Joseph Dillon here? Okay. Well, he decided, I guess.
15 Then we have Jeremy Firestone.

16 MR. FIRESTONE: Good afternoon, and I
17 thank you, once again, for allowing me to address you.

18 I am going to address a number of points
19 that have been raised today. First, again, the
20 legislation is very clear, it's not lowest price, it's
21 proposals that cost effectively provide price stability
22 and environmental benefits.

23 There has been some discussion about
24 whether Delmarva customers should be required to pay 100
1730

1 percent. In 2005, there were 259,000 and change Delmarva
2 customers. At the same time there were 317,000 occupied
3 housing units in the state of Delaware. That's from the
4 census. That means 81.8 percent of all households were
5 Delmarva customers. So right there we have very good
6 spread across all state households. We add the DEMEC
7 customers, who were probably around 90 percent, so this
8 concern that it's going to be put on a few is misguided.

9 Delmarva talks a lot about safeguarding
10 the interests of our customers. I think it's important,
11 again, to note that the Public Advocate, whose real job
12 it is to safeguard the interests of Delmarva's customers,
13 has come out in support of the wind bid. There is a
14 broad-based coalition in support of the wind bid, which
15 now includes organized labor -- yesterday the AFL/CIO and
16 the building and trades, building construction trades
17 endorsed the wind bid. We have local residents,
18 environmental interests, including Audubon, the Staff,
19 the Public Advocate, and independent analysts like
20 myself. And so, we have both public preferences and we
21 have technical expertise suggesting that the wind bid an
22 appropriate for the State.

23 I would concur with what BluewaterWind
24 said that I think it's important that as you move forward
1731

1 that the parties are given flexibility to negotiate an
2 appropriate agreement. And so, I would ask for that.

3 I would also ask that the Commission
4 have two votes, rather than one. Not just vote on this
5 hybrid approach, but vote separately on the wind project
6 and on a gas project for southern Delaware. And I ask
7 for that because I think there hasn't been public debate
8 on the gas plant. In addition, it's not a price stable
9 means of generation. And I believe it's been somewhat
10 boot-strapped into the process by Staff tying it to the
11 only bid, which is price stable and reduces environmental
12 impacts.

13 And I would, in that regard, concur with
14 the Public Advocate that the wind bid is the only one
15 that you should move on.

16 Let me say that, at the very beginning
17 Mr. Geddes talked about nine months, I would say that
18 that's the same period that it takes for birth, and I
19 would say that we are in a process now where you can give
20 rise to a new future for Delaware, be the bellwether of
21 the nation. And I would say that the eyes of the nation
22 are in fact on you, if we look at the recent reporting by
23 the national public radio, a column in the Wall Street
24 Journal and just yesterday -- I think it was yesterday's
1732

1 front page of the Washington Post.

2 I wish you good luck in your endeavors.

3 THE CHAIRMAN: Let me just ask you a
4 question. When you were speaking of the modification on
5 the two-vote process, should I interpret that to mean
6 that you don't put significant credence in the reactive
7 energy requirement that's been discussed or -- I'm not
8 quite sure how I should construe that response?

9 MR. FIRESTONE: I haven't had enough
10 time to really analyze that question in detail. I
11 believe that that kind of debate could take place in the
12 context of the IRP. We do have an ongoing IRP. If we
13 are to build a gas plant, it can be done certainly much
14 quicker than an offshore wind farm, it could catch up.
15 We could debate it. People who might live near where the
16 gas plant will be going to be located could be heard.
17 People who live sort of any gas transit line could be
18 heard. And we might even have a bidding process where we
19 might be able to get down the cost of that project.

20 So I think Staff's comment are well
21 taken, but I think that given the way that it sort of
22 morphed the process, I would be more comfortable with a
23 separate vote. And if the Commission then chose to vote
24 for both, that would be a vote for both.

1733

1 THE CHAIRMAN: Okay. Thank you.

2 MR. FIRESTONE: Thank you.

3 THE CHAIRMAN: Nick DePasquale.

4 MR. BONAR: Madam Chair, Mr. DePasquale
5 had to leave, but he has prepared comments from the
6 Delaware Audubon Society, and he would like us to
7 distribute them.

8 THE CHAIRMAN: Are they the ones? We

9 did receive comments.

10 MR. BONAR: Yes. You should have
11 received them in your pile.

12 THE CHAIRMAN: Here we have Peter
13 Mandelstam, he has already spoken. Patricia Gerrity, I
14 skipped over accidentally, I'm sorry.

15 MS. GERRITY: Good afternoon, Madam
16 Chair and members of the committee, agencies. I am
17 speaking today representing Citizens for Clean Power,
18 which, as you know, is a nonprofit, nonpartisan citizen
19 coalition based in Lewes.

20 Thank you for soliciting the public
21 comment on a regular basis throughout the review period.
22 The public response has indeed been phenomenal, including
23 hundreds and often personal communications to this
24 Commission regarding the fears and longings of people in
1734

1 our state who are tired of living under a cloud of ozone,
2 mercury, and particularly pollution.

3 Staff's recommendations recognize that
4 even with Delmarva Power's reliance upon conservation,
5 energy efficiency, existing market and the "currently
6 suspect hope" of a timely function MAPP project, Delaware
7 will remain exposed to the same volatile energy prices
8 that initiated this effort.

9 Energy conservation has its limit. Even
10 the proposed sustainable energy utility's best-case
11 scenario shows that it will take eight to ten years for
12 demand-side measures to take effect. And yet, those
13 measures will still yield only a 30 percent savings to
14 one-third of our population. Will a new generation
15 source have a chilling affect on conservation,
16 demand-side management and customer cited renewable
17 resource development? Citizens for Clean Power agrees
18 with Staff that there is a no evidence to support this
19 concern. We must create new energy sources in Delaware
20 for Delaware.

21 Considering the likely retirement of
22 units 1 and two at Indian River, coupled with major
23 obstacles in building a coal IGCC sequestration facility,
24 it is important for Delaware to move promptly in another
1735

1 direction.

2 Citizens For Clean Power would be
3 seriously concerned about a proposal to bring the NRG
4 gasification plant into the negotiations at this point
5 for two reasons. First, their very questionable record
6 on pollution.

7 Second, that nowhere in the comments
8 that I have heard is there any new information being
9 offered to you. There is no new information about
10 sequestration or the IGCC facility. Even though it's not
11 legally accurate to say so, the phrase poison pill keeps
12 recurring in my mind. And I think that the credibility
13 of NRG, given their behavior in the last six months, I
14 think is, in the view of many of the public, about zero,
15 and I would be very concerned about them coming into this
16 process.

17 We agree strongly with Staff that a
18 portfolio approach to energy needs is the most
19 appropriate approach to mitigate energy risks. Such a
20 portfolio need not be dependent upon fossil-fuel
21 production, even though we recognize that our dependence
22 on coal and gas-fired power plants will continue into the
23 next decade.

24 Recent headlines, only in the last week,
1736

1 talk about private, about government takeover in
2 Venezuela of privately held oil fields, talk about \$4 a
3 gallon gasoline coming very soon, and talk about the need
4 to stabilize greenhouse gases within eight years to avoid
5 global warming rise of more than 3.6 degrees over
6 preindustrial levels.

7 Delaware simply cannot delay in making a
8 decision to bring new clean energy to our state.

9 I would also say at this point that
10 there was some discussion, I believe by Delmarva Power,
11 about the historical basis for the least-cost standard.
12 Please, if there is one thing we know, we need a new
13 paradigm. The concept of a historical basis for cheap
14 power is really what is keeping us in so much trouble
15 right now with regard to pollution and the attendant
16 healthcare costs in Delaware.

17 Citizens For Clean Power supports the
18 nonpolluting BluewaterWind project. While Citizens For
19 Clean Power prefers to see a stand-alone contract for

20 BluewaterWind's entire 600 megawatt project, we are open
21 to the concept of building a new small-scale natural gas
22 plant to backup the wind project. We think it's
23 important for the Commission to have flexibility to
24 develop a diverse energy portfolio.

1737

1 Delmarva Power cannot be permitted to
2 dictate Delaware's energy future.

3 If I can say one more thing, very
4 briefly.

5 We also strongly support Staff
6 recommendations to require weekly updates from Delmarva
7 Power as the negotiations proceed, and that independent,
8 neutral oversight of the negotiations process to assure
9 good faith at all times.

10 Lastly, I want to salute the Staff, I
11 want to salute you, Commissioner McRae and the
12 Commission, you have done an extraordinary job in opening
13 up the door for public participation.

14 And thank you so very much.

15 THE CHAIRMAN: Thank you. Mr. Kempton.

16 MR. KEMPTON: Thank you very much.

17 First, I want to commend the PSC on
18 carrying forward this docket in a way that allows public
19 participation and openness to this participation review.
20 You have really done an incredible job, and I would
21 include Staff in that.

22 The PSC's Staff have recommended a
23 hybrid approach with an offshore wind park combined a
24 natural gas turbine with the turbine moved to Sussex

1738

1 County. This is innovative in that it provides higher
2 reliability than any of the three bids in isolation. It
3 provides voltage support or reactive power, even under
4 low wind and high-load conditions, and may allow deferral
5 of transmission upgrades with constant cost savings in
6 the transmission area.

7 However, I am concerned about
8 interpreting Staff's report as a considered
9 recommendation to shrink the size of the wind contract.
10 A smaller contract and/or a smaller physical installation
11 generally means higher price per megawatt hour. The
12 BluewaterWind bid was innovative, not in that it used

13 offshore turbines, exactly the same turbine, the Vestis
14 V93 (sic) has been in operation in salt water for two to
15 three years off Europe, rather the innovation here was in
16 project size, a size that fits within Delaware's electric
17 requirements yet achieved economies of scale not
18 previously achieved anywhere else. Thus, the resulting
19 price, as calculated by the consultant, \$99 per megawatt
20 hours. Compare this with LIPA's contactor, that is, Long
21 Island Power Authority, similar long-term power purchase
22 agreement requested by the power authority, that was a
23 140 megawatt offshore wind park. The price there is \$160
24 per megawatt hour. So, again, the 600 megawatt project,
1739

1 \$99 per megawatt hours -- even though to it only has a
2 400 megawatt contact -- and the LIPA, 140 megawatt
3 project, \$160. And it's not a linear relationship.
4 Things will jump up and down in between those, and they
5 are not totally comparable, but I think that this does
6 give us a warning that shrinking the contract may have
7 price implications.

8 THE CHAIRMAN: If I may say, I think
9 Mr. Mandelstam made that clear that he wanted to keep the
10 flexibility, recognizing the issue of economies of scale
11 and various other things. So I do think that message was
12 actually conveyed.

13 MR. KEMPTON: Okay. I apologize if that
14 was a repetition. I thought it might be good to have an
15 independent person, who is not financially involved, to
16 verify it.

17 THE CHAIRMAN: Okay.

18 MR. KEMPTON: Then the recommendation
19 would be, as you suggest, that the bidders be allowed to
20 have flexibility in setting contract size and so forth.
21 That also might involve deciding whether or not firming
22 power is needed. I mean, the bidders may look at it, the
23 size of the project, the type of contract, they may
24 decide we need a larger gas plant or we should use
1740

1 existing power plants. Remember, we've got DEMEC up
2 there in Dover with a gas plant that has not been
3 operated for two years, if I am not mistaken, because of
4 the high cost of natural gas.

5 So the question is: Doesn't it make

6 sense to know what the wind contract is going to look
7 like first, then decide how the firming power or the
8 reactive support should be allocated to add on to that?
9 And again, there is a difference in how long it takes to
10 do each of those kinds of projects.

11 Do I have any time left?

12 THE CHAIRMAN: The timekeeper says you
13 have one minute. I think he is generous.

14 MR. KEMPTON: He is a generous man.

15 John Levy of the Harvard School of
16 Public Health, with me providing input on the power
17 numbers, calculated the health benefit of the 600
18 megawatt project. We have submitted this on the IRP
19 docket. The full 600 megawatt project would over its
20 twenty-five year life reduce the health impact of our
21 current power system by 200 deaths, 225 hospital
22 admissions, 82,000 asthma attacks, 250,000 restricted
23 activity days, and other health impacts. These are very
24 significant. So it's not just health. I mean, we can
1741

1 give some rough numbers, and these are very rough, but if
2 you don't have any numbers, the dangers is you use the
3 number zero. This bid does not have a zero health
4 impact. It has a very large health impact. These
5 benefits are determined from --

6 THE CHAIRMAN: Are you reading from the
7 letter you shared with the Commission?

8 MR. KEMPTON: I just summarized some
9 numbers from it.

10 THE CHAIRMAN: I just wanted to know if
11 it was a different document?

12 MR. KEMPTON: No, I took some of the
13 yearly numbers and multiplied by 25.

14 These benefits are determined by the
15 project size, not the contract size. So no matter what
16 the contract is, if it's a 600-megawatt project, you get
17 this full set of benefits. However, if a smaller
18 contract forces a half-size project, we lose half of
19 these health benefits.

20 THE CHAIRMAN: Your timekeeper says your
21 time is up.

22 MR. KEMPTON: Thank you very much.

23 THE CHAIRMAN: Lisa Perlzoff.

24 MS. PERLZOFF: It's Perlzoff. It's my

1742

1 handwriting and a combination of the name.

2 Good afternoon. See, those are my
3 comments, they are not very long. Can you hear me?

4 THE CHAIRMAN: Yes.

5 MS. PERLZOFF: I am with the League of
6 Women Voters, and you are probably sick of listening to
7 me by now, but I just want to say in that respect that
8 Dr. Kempton just said about the health impacts, I noticed
9 along the way in the deliberations that I believe that
10 there has not been a direct connection in people's minds
11 between environmental impact and human health. People
12 think of the environment and they sort of think of wild
13 creatures and open spaces, but in fact there is a very
14 direct relationship. And my sense is it has not been
15 sufficiently aired in this whole debate. Nobody's fault,
16 it just hasn't happened. And that letter from the
17 Harvard School of Public Health was an eye-opener for me.
18 It puts a dollars-and-cents number on it.

19 So it's my opinion that we can't afford
20 not to use wind energy in the state. If you were to
21 calculate those costs into the bid, they are gigantic and
22 they're very, very personal and profound for the
23 individuals involved.

24 Now, I just want to say that I am here

1743

1 also as a Delaware citizen and as a Delaware native and I
2 love my state. Conservation is a wonderful principle,
3 Folks, but if you want to know where it leads take a look
4 the recycling. I know it's not an exact analogy, but
5 voluntary recycling has got us where we are with the
6 percentage of solid waste that is recycled in this state.
7 People don't want to turn their air conditioners off.
8 They don't want to turn their heat down. And I don't
9 blame them, I don't either, I'm just something of a nut
10 that way. But the final point I would like to make is
11 that as a native Delawarean, I have spent most of my
12 rather long life here, and a Delmarva customer, by the
13 way, I think the citizens of Delaware have spoken
14 overwhelmingly and, with all due respect, I am a little
15 tired of somebody trying to tell me what is in my best
16 interests. Some of you know that I am more than capable

17 of letting everybody know what is in my own best
18 interests, I have been known to do it before and I will
19 do it again.

20 So we have spoken to you, and it sounds
21 to me very much like we would like to have wind power.
22 Thank you for listening.

23 THE CHAIRMAN: Well, I don't know what
24 it was that you did before or that you might do again --
1744

1 MS. PERLZOFF: I will tell you sometime.

2 THE CHAIRMAN: -- but don't do it today.

3 MS. PERLZOFF: Commissioner Winslow can
4 attest to the fact that I didn't go anywhere near that
5 today.

6 COMMISSIONER WINSLOW: You write very
7 small, too.

8 THE CHAIRMAN: Okay. Mr. Muller.

9 MR. MULLER: Good afternoon everyone.

10 This has been a long process from our
11 perspective, and from my organization's perspective it's
12 a process that began in the early 1990s. And there have
13 been a lot of frustrations and a lot of missteps taken in
14 Delaware. And it's very encouraging that we are not at a
15 point where there is a serious possibility that we might
16 take some major steps in the right direction.

17 One of the things that we have wanted
18 for a long time is for there to be a proper connection
19 drawn between energy and environmental policy. And I was
20 hopeful that the involvement of the four State agencies
21 in this matter would bring that about. And I am feeling
22 the need to express my personal distress, then, in
23 listening to the representative of DNREC admit
24 commercials for what is by far the least environmentally
1745

1 acceptable alternative that has been presented. This
2 reflects on the reputation, the competence and the
3 integrity of the DNREC.

4 A quick comment on renewables. I don't
5 know whether you know this, but if you don't you need to.
6 This is a very rubbery word. Renewable doesn't mean a
7 good thing. The vast majority of the "renewables" in
8 Delmarva Power's portfolio are landfill, gas burning and
9 garbage incineration. These are horrible things,

10 socially and environmentally harmful things. So when we
11 look at renewables, we need to get beyond the word, and
12 make sure we are looking at wind, and solar and other
13 things that we actually want.

14 Supply versus demand, we followed the
15 activity of Senator McDowell's sustainable energy utility
16 and the activities of Senator McDowell in this area and
17 his consultant John Burn for many years. It's very
18 ironic and disappointing to hear the advocates for wind
19 bad mouthing the potential of demand-side investments.
20 It's distressing to me to hear Senator McDowell in his
21 filings arguing that we need no clean supply-side
22 investments. Both of these points of view are wrong. We
23 need as much of both demand-side and investment and clean
24 supply-side investment as we can get. There is no
1746

1 conflict between the two. Let's get over that.

2 This is not a reason to delay, this is
3 not a reason not to take a decision. Some have argued
4 that Integrated Resource Planning is something that
5 should come before a meaningful decision has been made.
6 I agree that theoretically that is true. I would like to
7 read to you just a couple of sentences from an Integrated
8 Resource Planning filing of Delmarva Power from 1994,
9 which says: The plan includes 168 megawatts of save-some
10 programs, meaning demand-side investments, including both
11 long-term commitments to conservation and short-term
12 commitments to load-management programs. The buy some
13 component consists of up to 200 megawatts of short-term
14 power purchases and 65 megawatts of long-term power
15 purchases. And I won't go on but, okay we are quite a
16 ways past 1994 and we haven't seen any of this.

17 Beyond that, the utility came to the
18 Public Service Commission seeking to shut down its
19 existing portfolio of demand-side management programs
20 claiming it couldn't afford them in a deregulated
21 environment. So we have another DSM docket before the
22 Commission, a revenue decoupling docket, and others.
23 From our point of view, we suspect them as being a smoke
24 screen and we hope that none of that will serve to delay
1747

1 meaningful action with regard to what we are here for
2 today.

3 With regard to NRG, I am the person who
4 made filings to the Commission asking that NRG be
5 disqualified on the grounds of a consistent lack of
6 candor in making of false statements. And I would
7 suggest you might want to read that. I will be glad to
8 send you copies. I don't think anyone in Delaware, other
9 than Delaware's political establishment, wants anything
10 to do with NRG.

11 So let me close, then, by urging you to
12 move ahead with requiring Delmarva Power to negotiate for
13 a wind project. We know they don't want to do it. We
14 know it's difficult for you to make Delmarva Power do
15 something that it doesn't want to do, but the public
16 interest requires it.

17 With regard to the addition of a gas
18 component, there is no question that there is a natural
19 logical synergy between wind and gas capacity. In
20 general, it makes sense. The details of the proposal
21 here are undeveloped, particularly with regard to the
22 available supply of natural gas for the proposed site.
23 So I think Professor Firestone's suggesting that these
24 issues ought to be voted on separately makes a lot of
1748

1 sense.

2 I will close with that. You have an
3 opportunity to do something valuable and important to
4 help us make a real change towards -- in a way that we
5 need to make a change, and I would urge you to step up to
6 the plate and do that.

7 Thank you.

8 THE CHAIRMAN: Carol Overland.

9 MS. OVERLAND: Madam Chair, members of
10 the Commission, agency Staff, my name is Carol Overland.
11 I am a Minnesota utility regulatory attorney. I work on
12 transmission lines, power plants -- I have actually
13 worked on wind projects as well.

14 Anyway, I am thrilled with the Staff
15 report and I need to let you know that this is something
16 that I have been advocating for years, the wind-gas combo
17 because in Minnesota we are using it because we have many
18 natural gas plants sited around the state and we are
19 siting wind turbines around them to utilize the
20 transmission and utilize transmission reservations. We

21 have done pretty good on utilizing the transmission. We
22 have haven't done too well on the contractual issues, it
23 needs work, but that's happening.

24 Here you have the opportunity to take
1749

1 this approach that will give you firm power, cleaner
2 power and just have that natural gas as backup, which
3 will just give you relief from that price volatility. I
4 think it's a great thing. I am very impressed with the
5 job Staff has done. And because I spend most of my time
6 suing state agencies in Minnesota, I am really -- I'm
7 tickled that I can actually agree with a state agency.
8 Their report was very thorough. The points they
9 raised -- it was exciting, but don't get too excited yet.

10 THE CHAIRMAN: Well, now, we have some
11 people who sue state agencies in Delaware, too.

12 MS. OVERLAND: Unfortunately, I won't be
13 one because I am not licensed here.

14 Also, though, for Mr. Cherry, I am very
15 concerned about your comments about IGCC. I represent
16 people on the ground who live next to where the Mesaba
17 plant will be, and the AOJ decision came out right after
18 your Wilmington hearing on the IRP. So it was like the
19 12th of April. IGCC, the record has established, is not
20 clean. The emission performance is bad. That was the
21 AOJ's decision. The recommendation, as demonstrated by
22 the Minnesota Pollution Control Agency, it doesn't work.
23 Cost, costs are out of sight. We are talking in
24 Minnesota costs of, like, 9 to 13 cents per kilowatt hour
1750

1 wholesale, which is about three times what most cost is
2 in Minnesota. So I imagine it would be a lot worse here.
3 IGCC cannot be used as a standby. It takes a long time
4 get it up and running. It will not work. I want to be
5 very clear about that.

6 The level of secrecy in this proceeding
7 has been disturbing go me because we have this
8 information in Minnesota. If you Google -- look at
9 legalelectric.org, that's my site. Look for AOJ
10 recommendation, and you can get the AOJ's recommendation
11 that goes through a lot of information on IGCC that
12 you've not been privy to -- well, you have been privy to,
13 but the public has not. And that's not right. The

14 public needs to know what it is you are deciding about,
15 and I have been disturbed about that.

16 Reactive power, that's a big issue. And
17 when you have reactive power problems -- wherever there
18 is an electrical island, and in this case an electrical
19 island on a geographical peninsula. And it's important,
20 Staff brought this up -- and, again, I am tickled about
21 that because you need to looking at that kind of thing.
22 Distributed generation all around the state is what will
23 strengthen your transmission system. Then you are not
24 dependent on the big transmission lines that you are not
1751

1 getting anything from, they are just going through you
2 community and taking your land away.

3 In Delaware, you can be independent.
4 That's what saved, like, the City of Long Beach in
5 California is that they had their own generation and they
6 got through that California mess. With your own
7 generation, you can survive just about anything. And
8 keep it local. Your system will be more reliable. It
9 won't be subject to terrorism. There is a lot going on.

10 So I really, really would like to see
11 the Staff recommendation approved as the first step to
12 get that camel's notice under that tent, from there go
13 into that IRP process and develop the policy things that
14 will get it moving. Then we will establish a blend,
15 accept a hierarchy of generation, starting with DSM,
16 which is always the cheapest, moving into wind with a
17 backup. In Arizona they are using concentrated solar as
18 the backup.

19 THE CHAIRMAN: You can come back for the
20 IRP proceeding.

21 MS. OVERLAND: That's correct. There is
22 a connection, and a lot of people I can see in this --
23 the public at least isn't clear about the difference
24 between an RFP and IRP. An IRP is just getting going and
1752

1 most people here, other than perhaps Mr. Muller, don't
2 even have a memory of what an IRP even is. There is a
3 lot there can be done in an IRP. And I would encourage
4 rules for that so then we all know what to do.

5 THE CHAIRMAN: Thank you.

6 MS. OVERLAND: Thank you very much.

7 THE CHAIRMAN: You know, I always do, I
8 know the public has an awful lot to contribute and we
9 have put in many hours with that and then unfortunately
10 there is kind of a time limit on a day, so I do apologize
11 that we can't have open-ended discussions on that.

12 If I may, I would like to take a quick
13 break of maybe five minutes and then we will come back to
14 Staff. I think that's -- I have gotten everyone who
15 asked for public comment. And we will come right back.
16 Five minutes, if you will. And then Staff can respond.

17 (A brief recess was taken.)

18 THE CHAIRMAN: Very good. At this
19 point, which is the last stage before action on at least
20 the part of the Commission, is Staff's final comments. I
21 see people still coming in, but you can be moving
22 forward.

23 MR. GEDDES: I will try to shout over
24 them.

1753

1 THE CHAIRMAN: Okay.

2 MR. GEDDES: Thank you, Madam Chair,
3 members of the Commission and State agencies. As you can
4 see from listening for the last couple of hours, there
5 are a lot of opinions, and a lot of positions. And
6 hopefully you have some appreciation, because I know that
7 you sat through some of these hearings before, the
8 difficult task that Staff had to try to come up with any
9 recommendation, given all the disparate interests and
10 positions.

11 But I think, to try to give you some
12 context for your deliberations. There are two things I
13 think you first need to think about. First is the
14 question that Mr. Shaw raised, should we go forward or
15 should we just bang the gavel and say we are done, and we
16 have done our job under the statute and we are closing
17 the RFP and, hopefully, you won't have to write a 98-page
18 order that says that. But the problem with that is, I
19 think it also -- based on the opinion, some of the
20 opinions you heard today, plus the statute doesn't take
21 the second step. And the interesting paragraph is the
22 one that Mr. Shaw cited to you or I believe Mr. Wilson
23 cited to you and then Commissioner Clark said, But it
24 does say more, doesn't it? And the second sentence which

1754

1 says after the negotiations the agencies then will decide
2 whether that contract, one or more, will be approved.

3 And so if you do terminate the process
4 today, you will not have the opportunity to see if those
5 negotiations bear fruit. Now, you have heard from all
6 the three bidders that they are interested in continuing.
7 And so that action would cut off any future negotiations
8 and the process would end.

9 If you look at Mr. Shaw's comments -- I
10 think I distilled them into four reasons why we should
11 not go forward or why you should not go forward. One is
12 that he believes that the proposal or Staff's proposal or
13 perhaps all the proposals are not valid. They are not
14 the lowest cost. Why would you buy a car if you didn't
15 know what the price was? And that there is no reason
16 that this all can't be done in the RFP.

17 First, about the car analogy, we are not
18 asking you to buy the car, we are just saying that
19 Staff's interested in the color red. It's up to you as
20 to whether the car gets bought, and we are not asking you
21 to make any purchase decisions today. We are just asking
22 you to consider that Staff thinks red is a cool color.
23 So I don't think that analogy really works too well.

24 With regard to whether the proposals are

1755

1 valid, this is sort of like a painting. You know, some
2 people see art and other people see just sort of a mess.
3 If you look at this as three bidders who made proposals,
4 and what Staff has done in its report is said, look, we
5 believe, based on our review, that two of these proposals
6 have merit, the wind proposal and the gas proposal. And
7 we have put some color and some texture on that. We have
8 said we think it should be this size. We think it should
9 be backed up, and that's what our thoughts are. But at
10 the end of the day -- and you have heard me say this many
11 times on many occasions -- that it's your docket. It's
12 your responsibility, along with the other State agencies,
13 and it's your decision.

14 So if you don't like the color red and
15 you think another color is better, then there is no
16 reason why you shouldn't consider that. And so just
17 because Staff has suggested a particular approach doesn't

18 mean it's the only approach and doesn't mean it should be
19 ultimately the approach that you agree with.

20 THE CHAIRMAN: I'm sorry. I didn't mean
21 to interrupt you. Go ahead.

22 MR. GEDDES: I think Staff looked at a
23 lot of things, and I think that Staff not only looked at
24 the bids and how those bids were evaluated, but also
1756

1 looked at other externality. Staff is very concerned
2 about reliable power in the southern part of the state.
3 We have had the experience that Mr. Howatt referred to,
4 it is still a concern. You can't argue with some of the
5 input assumptions in the WorldPower report, but I don't
6 think you can necessarily say that its conclusions, which
7 I understand have been verbally supported by PJM, are
8 incorrect. That in the southern part of the Delaware we
9 have a possibility, with the right contingency, to have a
10 reactive power problem where we don't have enough
11 reactive power. And we can have all the transmission
12 energy coming into the state, but if we don't have that
13 reactive power down there it is not going to get to the
14 customers in the bottom part of the state.

15 That is a concern. That's an
16 externality that Staff looked at when it reviewed these
17 bids and believed that it was important to bring that
18 concern to you, which is why the gas proposal of Conectiv
19 was included as part of the hybrid proposal that's before
20 you.

21 You have to ask why is Delmarva so
22 afraid of sitting down at the table and negotiating?
23 What about this process, the RFP, is something to their
24 dislike and yet they say, well, we will move it all
1757

1 forward to the IRP. I will suggest to you that the
2 statute is a little different and that there are
3 different criteria in the IRP than there are in the IFP.
4 I will say to you as a representative of Staff, I think
5 that this process is the best opportunity to do something
6 new and creative with wind power because of some of the
7 constraints of the statute.

8 As I said, when I first got up here,
9 Staff has attempted to comply with the statute. Staff
10 has attempted to do its job. It's the same comment I

11 made to the Chancellor a few weeks ago when NRG asked us
12 to take a ride down to Georgetown, and I said to the
13 Chancellor then -- which I say to you today -- Staff has
14 done its job. You may disagree with the conclusion that
15 Staff has reached, and that's fine, but Staff has
16 attempted to give you its best advice and recommendation
17 for your consideration.

18 Now, let's assume you go forward and we
19 get over the first issue that Mr. Shaw suggests stops
20 this discussion and we get to the seconds issue which is:
21 How should we move forward? As I said before, I think
22 that Staff believes that it is offering or suggesting to
23 you that the two top bidders should be negotiated with,
24 one for the wind power, one for the backup gas turbine,
1758

1 which could be synchronized which would address the
2 reactive power that PowerWorld identified in its report.
3 But understand, Staff's report was started a week and a
4 half ago and, yes, we worked another weekend and we kept
5 telling Robert that he had to keep working, and give us
6 the draft that we needed to try to make this in to
7 something.

8 The issue is that it is trying to
9 capture a fluid process at a static moment. And so we
10 have learned information today that we didn't have when
11 we wrote this report. And I don't want you to be
12 constrained by Staff's report, because it is a moment in
13 time. And we did not have the benefit of NRG's comments.
14 I can't tell you whether it would change anything we did,
15 I doubt it very much, because I think what Mr. Howatt
16 said in his comments to you is our intent is to ask
17 Delmarva to negotiate with the two top bidders and to
18 come up with a proposal. But if that, for whatever
19 reason, that gas option is not viable, either through
20 siting issues or through transmission issues, then other
21 alternatives should be explored. But I don't think the
22 solution to this process that we have been involved in
23 for nine months is to stop it because somebody suggested
24 Staff's proposal isn't "on all fours" with the bids that
1759

1 it received. It's not a static process. It's a dynamic
2 process. We have complied with the statute.

3 We are bringing two bids to you for

4 consideration. Yes, they have different parameters.
5 They don't look exactly the same, but at the end of the
6 negotiation process, they may look completely different.
7 You heard the president of BluewaterWind when asked
8 specifically, Well, how big is your project? I want to
9 negotiate that. I mean, so, again, it may be a different
10 color or it may be red, who knows.

11 The question about NRG, which I think is
12 a legitimate question, should they be allowed to
13 participate? I think Staff's position is that our
14 recommendations remain the same, that there should be a
15 finite time to see if something productive can come out
16 of this, and if not, then we should recalibrate and
17 revisit. But Staff's recommendation is clear that the
18 top two bidders that were evaluated and then the
19 externalities that we discussed applied are still Staff's
20 recommended proposal to you for your consideration.

21 And with that I will take some questions
22 because I assume there are a couple. Thank you.

23 THE CHAIRMAN: Commissioner Clark.

24 COMMISSIONER CLARK: With what NRG said
1760

1 today, I mean assuming that the Commission and maybe
2 other State agencies, however it pans out -- as far as
3 NRG is concerned, if they were included in the process at
4 this point, what type of complications would that have?
5 I am having trouble visualizing how the negotiation
6 process will go forward, if it's approved today, for
7 your -- or your recommendations are approved today?
8 That's the first part of the question. If you could
9 maybe outline that a little bit, how you visualize that.

10 And then secondly, whether or not having
11 another entity, having all three bidders essentially be
12 included in the process would complicate that or what
13 ramifications that would have.

14 MR. GEDDES: Two part response,
15 hopefully responsive to both parts. With regard to how
16 the process would work, I think there should be some
17 finite period of time, 30, 45 days that the parties try
18 to discuss the various issues as -- let's assume Staff's
19 recommendation is approved -- that there be discussions
20 with BluewaterWind and also some firming proposal, in
21 this case, Conectiv, to see if they are interested and

22 see if it's economically feasible. And there would be a
23 report back to the Commission saying, yes, it is; no,
24 it's not, here are the problems, here are the issues.

1761

1 But I do not -- as I anticipate the process, do not see
2 NRG being involved in that first wave of discussions.
3 However, if for whatever reason Conectiv
4 is not interested or the economics are such that getting
5 gas down to the facility where it needs to be, the Nelson
6 substation, if that's the place, make it uneconomic and
7 they are not interested, then we do have a third party
8 who has expressed today their interest in providing that
9 firming power. And I think that we would then reach out
10 to them and ask them to discuss. My recommendation would
11 be, on behalf of Staff, that the first two bidders,
12 Conectiv and BluewaterWind, be asked to sit down with
13 Delmarva first. And then assuming how those negotiations
14 go, whether NRG would be invited to discuss the second
15 piece of recommendation if that's what the Commission and
16 the agencies decide is appropriate to provide firming
17 power for the wind farm.

18 COMMISSIONER CLARK: If the firming
19 component of it turns out not to be practical, what's the
20 Staff's position with regard to it being a severable
21 matter?

22 MR. GEDDES: Staff's position is that
23 its proposal is not severable. That it has to be
24 revisited if there cannot be a firming component, because

1762

1 it is a package. And contrary to Mr. Muller and
2 Professor Firestone's position that she should be voted
3 separately, it's Staff's position that it was designed
4 and recommended, for the reasons set forth in the report,
5 as one hybrid proposal for the reasons stated.

6 COMMISSIONER CLARK: Thank you.

7 THE CHAIRMAN: Well, on that point,
8 Professor Firestone mentioned that there might be other
9 technology. You have kind of clarified that this is the
10 package, but, to your knowledge, is there some other
11 means to accomplish the, obtaining the reactive power
12 that we are talking about? I mean, you have linked this
13 absolutely for some reason, I'm sure.

14 MR. GEDDES: Well, again, we are trying

15 to provide you a recommendation that is consistent with
16 the statute, consistent with the process. And one could
17 say that we have tinkered a little bit on the margins,
18 but I would also suggest to you that we also tinkered on
19 the margins to allow some of the information on the IRP
20 to be brought forward before we made the evaluation. So
21 we have done the tinkering on the basis of trying to
22 provide more information rather than less. And I would
23 suggest to you, yes, it is perhaps inconsistent not to
24 say, well, if there are other technologies that might be
1763

1 cheaper, why don't we propose those? But I think you
2 have got an advocate in BluewaterWind that to the extent
3 that they realize that their proposal may be contingent
4 on finding firming power that is economic, that drives
5 that price down, that they will probably do everything
6 they can to suggest in the negotiations that there are
7 better alternatives out there. And we will just have to
8 see.

9 As I stand here today -- usually I do
10 sit. As I stand here today, I don't know of another
11 technology that might be cheaper than one of the bids
12 that was presented.

13 COMMISSIONER CLARK: Just reflecting on
14 your answer to the second part of my question before and
15 it didn't quite soak in.

16 MR. GEDDES: I wonder why.

17 COMMISSIONER CLARK: Have you considered
18 what the benefits may be if sort of -- I mean, under this
19 proposal in one way BluewaterWind would be the primary
20 awardee and there would be a contingency to have firming
21 power available to have both of the potential bidders in
22 that situation compete? Would it unduly complicate the
23 process? I mean, why would that not be in our best
24 interests to go ahead, while we are going through this
1764

1 process anyway, to go ahead and include the other party
2 since there are only a total of three?

3 MR. GEDDES: I suggested an iterative
4 process only because that's the way, at the time we wrote
5 the proposal, we thought that was reality. Now reality
6 has changed. We have another party who is interested. I
7 would suggest again it's time to be a little creative,

8 time to be a little dynamic.

9 First of all, we don't even know if

10 Delmarva, based on its statements in the press -- and I'd
11 hate to hold anybody accountable to those. We are not
12 even sure they are going to sit down with anybody. We
13 may end up, Staff and its consultant negotiating these
14 contracts. It's unclear whether Delmarva is even going
15 to participate. Now, I'm not trying to cast any
16 aspersions, but at the moment there are very fluid pieces
17 to this process. And I think that to add another
18 complication and saying, all right, we have two bidders
19 now for backup power, in the room at the same time you
20 are trying to negotiate with BluewaterWind, could create
21 a dynamic that may be hard to manage. That's why I think
22 it's better to do it iteratively. BluewaterWind is the
23 primary, Conectiv is part of that; and if to Conectiv
24 doesn't work out for whatever reason, then perhaps coming
1765

1 back to the Commission or the agencies and suggesting we
2 are going to do this or in fact coming back with a
3 proposal that says we have considered this and now here
4 is an iteration, would you consider that might be
5 appropriate.

6 COMMISSIONER CLARK: Thank you.

7 THE CHAIRMAN: Do any of the other
8 commissioners or -- Mr. Cherry.

9 MR. CHERRY: The clarifying question,
10 Mr. Geddes, how, when and in what fashion did Conectiv
11 suggest to Staff that they were interested in becoming a
12 part of a hybrid solution?

13 MR. GEDDES: A moment.

14 My understanding, in talking to
15 Mr. Howatt, is that there is a letter dated April 16th
16 that indicated that Conectiv was at least interested in
17 discussing and negotiating but made no commitment.

18 MR. CHERRY: And is that obviously in
19 the record, on the website? I don't recall seeing it,
20 that's all.

21 MR. GEDDES: It's on the website, I
22 guess.

23 THE CHAIRMAN: Was this in response to
24 an approach by the Commission or was it volunteered?

1766

1 MR. HOWATT: Chairman McRae, it was an
2 unsolicited letter from Conectiv Energy, and they had
3 indicated in the letter -- it was a very short letter --
4 indicated that they wanted the opportunity to be able to
5 discuss this and to enter negotiations.

6 In similar fashion, the Bluewater
7 request was also made and it was an unsolicited request.

8 THE CHAIRMAN: And I thought you guys
9 had thought this up.

10 MR. GEDDES: I would just remind the
11 Chair and the other members, I believe Conectiv is on the
12 record today saying that they are --

13 THE CHAIRMAN: Yes. Absolutely. But I
14 was intrigued by the response to Mr. Cherry's question
15 because I too was unaware of the letter. And I should
16 monitor the postings more closely is what that says.

17 COMMISSIONER LESTER: If NRG and
18 Conectiv are both on the record today, then why can't
19 they enter into negotiations at the same time?

20 MR. GEDDES: Again, there is nothing to
21 prescribe the negotiation process, the only thing that
22 the Commission is being asked today is to instruct the
23 parties to negotiate. I don't think the Commission and
24 the other agencies are being asked, by Staff, at least,
1767

1 to in any way put hard edges around that negotiation.

2 Now, one point that Mr. Sheehy had
3 raised with me is there are issues of confidentiality and
4 to the extent that more parties get involved, it could be
5 more of a process issue. But at the moment our
6 recommendation is ask the parties to negotiate on this
7 basis or whatever basis you believe is appropriate or no
8 negotiations, however you decide this. And we have laid
9 out a way that we think is one way or one path forward,
10 but you may come up with a better one.

11 THE CHAIRMAN: Do we have any more
12 questions?

13 COMMISSIONER CLARK: Concrete questions,
14 I guess something we all have discussed before we make a
15 decision. If we are going to end up accepting your
16 recommendation -- the time frames are certainly going to
17 be of interest to us and they are going to be important.
18 You can't not be mindful, you can't not be mindful of one

19 of the parties to the potential contracts indicating that
20 they do not want to participate in the process, and
21 certainly in being reflective as to what the statute
22 provisions are, I mean it does seem like it's pretty
23 mandatory in that regard and it also does provide for
24 acceptance of one or more proposals, in other words,
1768

1 multiple proposals. But, I mean, have you given any more
2 thought, I mean, as to timing? Are you just recommending
3 giving them 30 days to see where it comes back?

4 MR. GEDDES: I think, to the extent that
5 the agency can keep the pressure on by requiring periodic
6 reports and understand that at some point the parties are
7 not getting the work done that they are going to be
8 subject to Commission criticism or further order.

9 THE CHAIRMAN: Well, isn't there a
10 trigger date? I mean the RRP is going to come into play
11 at some juncture, the RFP has to be looked at in the
12 context of. It seems to me it's some of a back-end piece
13 where we would have to have resolved this question.

14 MR. GEDDES: Yes. There is a final
15 date, and I would suggest to you it's probably six to
16 eight months away. But I would also suggest to you that
17 if push came to shove that the Staff, along with its
18 consultant, could negotiate an agreement and bring it to
19 you. If Delmarva did not want to participate now -- I
20 have known the representatives of Delmarva for a long
21 time, I wouldn't think that they would like that too
22 much. And if I were sitting in their shoes, I would
23 think that would be the worst of all worlds. But the
24 statute doesn't say anything about Delmarva being at the
1769

1 table. It just says that if a contract is finalized by
2 you folks, they shall enter into it.

3 So I am sure there will be some other
4 side trips to various and sundry places in New Castle,
5 perhaps Kent, before that ultimately occurred, but --

6 THE CHAIRMAN: At least Kent.

7 MR. GEDDES: But I think given the
8 statute one could negotiate this contract, finalize it
9 and then say to Delmarva: Sign it. I don't believe
10 that's the way to proceed. I mean, I'm not suggesting
11 that. I am just saying that in this six to eight

12 months -- I mean, I think we need to understand in the
13 next 30 to 60 days whether we have progress, something
14 that's going to be doable or they may come back and say,
15 we are just way too far apart, we can't do this because
16 the wind farm wants to be bigger, Delmarva wants it
17 smaller, nobody wants to bring the gas to Sussex County,
18 NRG doesn't think it's economic for them to do it. Who
19 knows? No third party steps in and says they will do it.

20 Unfortunately, we are looking at this as
21 a snapshot now, based on what we knew a week ago. And as
22 we move forward, it's going to have to develop and we
23 will probably have to create some more orders. This is
24 the order filed in this case. There are 11 orders in
1770

1 this case over the last nine months. It's a pretty
2 active proceeding. And some of these orders have been
3 made based on developments that have occurred during the
4 process. And I am suggesting to you there may be a
5 couple more orders in this file before it's all done.

6 THE CHAIRMAN: I can say at least at
7 this juncture that I definitely support the notion that
8 we should pursue wind. I'm somewhat undecided around the
9 process as to the two parties. I think one of the
10 thoughts behind wind was bringing clean power, clean
11 energy, and trying to support that. And certainly if we
12 go with gas-fired fossil fuel, then we have that issue
13 and IGCC represents other issues that we have certainly
14 talked about over time.

15 So I am more inclined to the sequential
16 approach because of the principal objective. And I think
17 I said at the outset, my concern, as we talked about
18 uncertainty and instability, I certainly do not think
19 it's present in the market as we know it today, so I have
20 less difficulty with the foray into the unknown because I
21 think, as I sit here, I am in the unknown. So from that
22 standpoint I am on board and I guess, if I had to choose,
23 a preference would be sequential negotiations, with
24 monitoring. I have to say it's daunting to consider a
1771

1 negotiation process where one has outright declared, I
2 won't negotiate. I mean, as far as the climate that is
3 being set for negotiations and what one can realistically
4 expect in that environment, I don't know. I do think it

5 should be given a test, but it does give me some pause.

6 I mean, those are my thoughts off the
7 top. I am anxious to hear from my colleagues and perhaps
8 get some further guidance.

9 COMMISSIONER CONAWAY: Madam Chair, I
10 would like to take this opportunity to thank our Staff,
11 who have given up many nights and many weekends to get us
12 to this point, and to all of the people who have come
13 out, numerous times, to support their views and ours, and
14 the three state agencies and this Commission also deserve
15 to be commended for the hours we have put in.

16 I have studied, I have read, I have
17 agonized over this decision, but I sit here right now
18 prepared to make a motion to accept Staff's
19 recommendation with sequential negotiations and ongoing
20 monitoring of those negotiations.

21 THE CHAIRMAN: Is there a second?

22 MR. CHERRY: I would like to comment
23 before the motion.

24 THE CHAIRMAN: Well, why don't I get a
1772

1 second and then you could comment?

2 MR. CHERRY: Thank you.

3 THE CHAIRMAN: Let me just see if there
4 is a second. The motion is still alive here.

5 COMMISSIONER CLARK: I will second for
6 purposes of discussion.

7 THE CHAIRMAN: It's been moved and
8 seconded. And I believe that Mr. Cherry was about to say
9 something.

10 MR. CHERRY: Just got to get it out
11 there now. This has been a tremendous experience, and I
12 have thoroughly enjoyed my time with you all up here and
13 learned immense things about the process of the Public
14 Service Commission. And in the few votes that have
15 occurred, I see the way this process works and you listen
16 inattentively and you share some feelings and some
17 thoughts as you just did, Madam Chair, and Commissioner
18 Conaway and now would be a good time for me to chime in
19 with the Department of Natural Resources' conclusion, if
20 you will, at this point that we will not be making a vote
21 today. I am authorized by the Secretary to be here, to
22 speak on his behalf. I have been instructed, however, to

23 not vote on any motions here today.

24 We agreed a long time ago to abide by

1773

1 the Public Service Commission's rules in this proceeding
2 and it made certain sense at the time because this is
3 primarily a utility issue and you folks are clearly more
4 adept at that than the Department of Natural Resources.
5 But in my world in the Department of Natural Resources,
6 we would take public comments through a workshop process,
7 we would have meetings, public meetings and we would take
8 it to a hearing, such as this, like we would any
9 application, for instance. And then the hearing officer
10 would cogitate on that. He would submit a recommendation
11 to the Secretary, the Secretary then makes his decision.

12 In this process he doesn't have that
13 capability. I will be briefing him as will others, the
14 transcript is available. He has learned a lot on this
15 issue. But he would like an opportunity to think a
16 little bit more about what has been said here today and,
17 as Mr. Geddes points out, a week and a half ago we were
18 one place, today we are someplace else. A week from now
19 we could be yet in a third location.

20 This has got to end, though. And I
21 would suggest that no more than two weeks the Secretary
22 will be making a decision and sharing that with you. And
23 I hate to complicate the process with this procedural
24 matter, but that's way it is.

1774

1 THE CHAIRMAN: I am glad you got that
2 out on the table. And if you don't mind, can I also --
3 if the other agencies at this juncture want to make any
4 kind of statement and then we can get back to the
5 Commission's process, understanding it's just us as far
6 as the vote.

7 MR. SCOGLIETTI: Thank you, Madam Chair.
8 In some respects I echo Phil's comments as well. Both he
9 and I represent administrative bodies within the
10 administration. I particularly represent my boss,
11 Jennifer Davis, and like Phil, I have been keeping her
12 apprised of the situation pretty much on almost a daily
13 basis as we have been going through this process. But
14 like Phil, as well, I do not feel and I have not been
15 authorized to vote either positively or negatively on any

16 proposal that we face today, so I will be withholding my
17 vote.

18 However, we do expect to move
19 expediently after this process is done to come to some
20 conclusion.

21 MR. COHAN: I also would like to echo
22 some of Phil's comments, although I'm not quite as
23 enthusiastic as you are about the joy you have
24 experienced going through this process, but it has been a
1775
1 learning experience.

2 Like I said earlier, we did brief our
3 legislation leadership after the Public Service
4 Commission Staff report came out. It was well thought
5 out and very intriguing, but what has happened is it has
6 kind of opened up the door to other options that may be
7 explored. I also am not going to voting. I have not
8 been authorized. We are going to work over the next
9 couple of weeks to come to a consensus agreement. And
10 hopefully, as Phil said, there has to be an end to this.
11 And we are going to work diligently over the next couple
12 of weeks to have that happen.

13 THE CHAIRMAN: Now that I have that
14 established on the record, I will go to Commissioner
15 Winslow. We still have the motion on the table, and I
16 assume this connects with that in some way, unless you
17 are going to tell me that you are not voting.

18 COMMISSIONER WINSLOW: Madam Chair,
19 thank you.

20 Mr. Geddes, I guess all of this has
21 prompted a question, a legal question. Given the status,
22 as announced by the other state agencies, is there a
23 point to proceeding to a vote on this since I assume we
24 need have a unanimous vote or can we go forward? There
1776

1 are three agencies that are not voting and there is one
2 agency that is voting. How can we go forward?

3 MR. GEDDES: Well, there are two answers
4 to that, there is probably the legal answer and the
5 answer I would give you as counsel.

6 Let me start with the counsel issue
7 first. Maybe I will end up in the same place. I think
8 the Commission should vote. Whatever the commission

9 does, I think the Commission should vote. The other
10 agencies have different mechanics for doing things. They
11 have different procedures. And they have articulated why
12 at this particular juncture they are not prepared to
13 vote. But I would urge you to do something, and to put a
14 stake down somewhere, wherever you think that stake
15 should be.

16 The legal issue, I think that if one of
17 the agencies -- well, back up a minute. I'm not sure the
18 three agencies are going to come out in the same spot
19 with the Commission. There may have to be, as they do
20 sometimes in legislature, have a workshop -- I'm sure you
21 have the terminology -- it escapes me -- where the Senate
22 and House come together to work on a compromise bill.
23 There may be that requirement here. Because as I read
24 the legislation, if all the agencies don't agree on a

1777

1 course forward -- well, let me state it a different way.
2 If one agency says no, we are not doing this, I think the
3 statute requires all four agencies. Now, a nondecision I
4 don't think would stop the process.

5 So hypothetically -- it's a long answer
6 to a short question -- if the Commission acted and nobody
7 else said a thing, I think you go forward. If two
8 agencies agree or three agencies agree on a course
9 forward, you go forward, until hypothetically one agency
10 says, No, we will not agree to that. Now, I'm not sure,
11 based on the comments I heard from the other three state
12 agencies, how their process is going to end up. They may
13 suggest another alternative as one member suggested that
14 perhaps the -- I think Mr. Cherry did, although that's
15 not exactly what I said, but your comment was, look,
16 things have changed a little bit, maybe we want to come
17 out in a different spot.

18 So the short answer is I still think the
19 Commission should vote. There is no legal requirement
20 for the Commission to vote. I don't think anything can
21 be done without some kind of affirmative vote to say go
22 forward. I think things can be stopped if one agency
23 says no.

24 THE CHAIRMAN: Let me just ask: My

1778

1 concern about not voting is the Commission speaks by this

2 voice. And I don't even know what point of negotiation
3 or compromise or collaboration we could have if the
4 Commission hasn't spoken. I am saying, what are the
5 other agencies working with or against? if we don't speak
6 to where we are. That's what my theory is.

7 MR. GEDDES: Could I follow up, please?

8 MR. CHERRY: Madam Chair, I just want to
9 make sure it's understood, it's not that we are not
10 voting, it's that we are deferring.

11 THE CHAIRMAN: I understand that.

12 MR. CHERRY: And we will have a decision
13 within two weeks.

14 THE CHAIRMAN: I'm very clear. I am
15 speaking to my colleagues on the Commission as to why
16 their vote at this juncture is of some moment. For
17 example, let us say that all of you over the next week --
18 let's say that the three other agencies come back and
19 they say -- this is just a hypothetical, of course -- we
20 are in agreement. If our vote is on the record it's
21 clear, I mean everything is moving. We don't need to
22 come together and do something, which is sort of what I
23 am trying to avoid. So if we at least are clear.

24 COMMISSIONER WINSLOW: I want to vote
1779

1 today, Madam Chair, so if that's why you are continuing
2 to argue, please don't continue to argue.

3 MR. GEDDES: Madam Chair, could I
4 possibly just comment, just a short follow-up?

5 Staff actually wasn't particularly --
6 Staff knew it had to put its stake down somewhere. It
7 wasn't particularly happy with having to write the report
8 and taking the first step in this process, but it felt an
9 obligation it had to so people could take a shot at their
10 proposal. We knew that not everyone was going to agree
11 with it. We actually have gotten a lot of affirmation,
12 which is very nice, on the proposal. I think it's now
13 the Commission's turn --

14 THE CHAIRMAN: We know that. We have
15 never been shy.

16 MR. GEDDES: -- to take the step,
17 because then you perhaps will build consensus with the
18 other agencies, the other agencies will know where you
19 are and they can say, well, we agree or disagree with

20 that, and it moves the process one step further.

21 COMMISSIONER WINSLOW: Thank you, Madam
22 Chair. I have no more questions, but having listened all
23 day long and not having the opportunity to say too much,
24 I wanted to say maybe more than a few words before I
1780

1 vote.

2 I will not be supporting the motion as
3 it has been stated, but I would say that Delaware is a
4 member of the PJM's organization, it's 13 states and the
5 District of Columbia, it's a large organization, and has
6 accurately described as the world's largest regional
7 transmission organization. There is a -- there are two
8 nodes, I think they are called Bettington to Black Oak
9 over which electricity flows to this part of the country.
10 And because of the nature, the number of people in our
11 area of the country there are constraints on electricity.
12 We pay a lot more money with respect to electricity, as
13 Mr. Howatt has indicated and as Ms. Dillard has pointed
14 out over the years as a result of that constraint.

15 So in my mind it's very much an
16 imperative that we place a generation facility in our
17 state and that we hopefully will then positively impact
18 the prices with respect to our citizens here.

19 The legislation -- and Mr. Geddes
20 mentioned the legislation early on today. And I confess
21 I am one that thinks the legislation can be improved
22 upon, because of us in the state of Delaware, if we in
23 fact put generation in Delaware, we are going to give a
24 benefit, as has been noted by some people, to everybody
1781

1 in Delaware. We also affect the LMP and give a benefit
2 to people in Maryland, Virginia, and New Jersey.

3 And as we sit here and talk, not all the
4 people in Delaware who receive the benefit are going to
5 assist in paying for that benefit. So I hope that maybe
6 someone on this dais up here will take that issue back to
7 their boss and discuss whether or not the legislature
8 might address in some equitable way that issue. We can't
9 address it in the Commission.

10 Secondly, it's probably too late and
11 probably just sort of a wish as far as I am concerned,
12 but I know as a fact, because I talked to them, that the

13 commissions in Maryland and Virginia would love to have
14 the ability to partner with us with respect to generation
15 in Sussex County, but we are not going to have the
16 opportunity because the legislation doesn't permit that,
17 and I think that's unfortunate. I think in the past we
18 have always done that, Delaware and other states have
19 always had the legislation, always supposed to be in
20 Delaware only benefit Delaware.

21 As I stated from the outset, we are a
22 member of PJM, we are a member of a large regional
23 organization, and that organization is something, when
24 they planned for that organization, they planned for the

1782

1 general benefit of the entire organization. And I think
2 by just planning for Delaware is somewhat myopic. And as
3 inferentially mentioned by Mr. Shaw, you know, alluding
4 ourselves to in-state is not necessarily good for us or
5 for any other state. And I, frankly, think that the
6 Staff did just an excellent job. As far as I am
7 concerned, they hit the ball out of the ballpark from my
8 understanding of the grid and what is needed in Delaware
9 and the Delmarva Peninsula, I just don't think that given
10 the way that this has come about, the fact that this
11 happened at such a late part of the game is not the
12 Staff's fault, but it has come out at the end the idea
13 that the Staff has -- which I like so much, but I don't
14 think it's been necessarily fair and equitable to some of
15 the other parties here.

16 So I would be in favor of the Staff plan
17 as modified, because I disagree with Mr. Geddes. I think
18 when you have two people competing and coming in with an
19 idea, you will get the two parties to come in with a
20 pretty good best foot forward. But if we negotiate with
21 one party, being Conectiv, and you aren't able to do the
22 gas plant in Sussex County in an affordable, reasonable
23 way, then you have got your competition off the plate and
24 the other party knows they have got an advantage

1783

1 competitively in terms of negotiation.

2 So I favor having both parties negotiate
3 simultaneously, so to speak, with Delmarva, so that we, I
4 think, will get a better deal with respect to what we
5 want.

6 And there were comments made about
7 Mr. Cherry. Frankly, Mr. Cherry has been a good
8 cheerleader, and I say that in a positive way. I think
9 some of the his comments about Indian River No. 1 and 2,
10 we have to not forget that we want to improve those
11 areas, too. And so I don't think we should lose sight of
12 that, that's a problem area and we want to improve that
13 in some fashion.

14 Who knows, maybe through this procedure
15 something positive will happen there as well. But I
16 guess my real great regret is we have not engaged our
17 sister states to look at these issues with us in a
18 regional way, because it would be more affordable,
19 probably, to hold the entire wind farm and maybe, who
20 knows, an entire pace generation, et cetera, and so I am
21 disappointed in that. But I am convinced that the Staff,
22 under the circumstances that we have and constrained by
23 the law, and Mr. Geddes is correct, we have got to follow
24 the law, that we have to support that generation.

1784

1 And I am hopeful that Delmarva will do
2 what they should do, which is negotiate in good faith.
3 And then if they find that they can't come up with
4 something that is reasonable, then, you know, I think
5 they will be in better shape to come back to us and give
6 us the explanations.

7 So I am going to vote against the motion
8 because I do believe the competition between the two
9 parties will give the consumers of our state a better
10 chance and a better deal.

11 COMMISSIONER CLARK: Madam Chair, I
12 would concur with Commissioner Winslow with regard to NRG
13 being involved in the firm power bid as well. As
14 everybody has noticed or the process has certainly been
15 fluid, it's metamorphosized from what it was originally.
16 We've only got three total parties involved. So I think
17 the benefits to having a little bit of competition on
18 that end would outweigh any type of problems or
19 difficulties you may have from an administrative
20 perspective in having both the parties there.

21 The other -- the question that I have
22 for the group and with that modification I can support
23 the motion. And one other reason, too in that vein, if

24 we are talking about the process being a six- to
1785

1 eight-month process, if you only have one party involved,
2 if you have Conectiv involved and that doesn't go
3 forward, then you almost have to restart and go through
4 it all again. So it seems like the extra effort and some
5 of the extra burden of having three heads, four heads at
6 the table is outweighed by potentially, you know,
7 dragging the process out because, again, we are not going
8 to approve any contracts, that means all four State
9 agencies, until it's laid out.

10 As far as I am concerned, I would like
11 to know, you know, what this modified contract would mean
12 in terms of increased prices for the customers. I mean,
13 there is just a whole lot of information at this stage
14 that we don't have. But there is no harm in going
15 forward and having each party negotiate their best deal,
16 lay that on the table and then see where we are.

17 But one other issue that I have, that I
18 would like to know what the rest of you think about, is
19 whether or not the wind issue could be broken out or
20 could be severable as we go through this? I'm not saying
21 that we should commit to that, under any stretch of the
22 imagination now, but, again, to go ahead and while we are
23 going through this process, instead of having to go
24 through two total processes, it could all be broken out

1786

1 for us so we would have the full availability of options
2 when the time would come due to make the decision.

3 THE CHAIRMAN: Both of them in the sense
4 of a separate vote?

5 COMMISSIONER CLARK: Not necessarily --
6 it would be modifying the Staff proposal to have wind
7 broken out by itself. I mean, not --

8 THE CHAIRMAN: Without anything else?

9 COMMISSIONER CLARK: Without anything
10 else. And their bid should probably be the same either
11 way, really, I would think. And maybe I am being naive
12 in that regard. If it's not, I am sure the parties will
13 raise the issue.

14 THE CHAIRMAN: I suppose, we certainly
15 could do wind by itself and a separate, in connection
16 with that, and want to have another procedure. I would

17 just mention, although I am perfectly fine with where you
18 are headed, is if you went one, two, it's not like you
19 were without options because what was proposed earlier
20 and discussed is the negotiation of balancing it with
21 what is on the wholesale market. It just requires
22 somebody having to take those steps. I just want to
23 clarify that if you do 1, 2, there is 3, and there is
24 potentially, not that we put it only table, even perhaps
1787

1 other technologies.

2 Yes.

3 COMMISSIONER WINSLOW: The one thing I
4 forgot to indicate in my comments was that I think the
5 expression by Bluewater today is flexibility is
6 important, and where that might conflict with the exact
7 number of kilowatts that the Staff has recommended, I
8 would amend my previous comments to indicate that the
9 parties who are negotiating must have the flexibility in
10 their negotiations so that Bluewater is given a fair
11 shake at giving us a decent price.

12 Also, by the way, I also neglected to
13 indicate that I support Mr. Geddes' position that there
14 should be periodic reports back to the Commission so we
15 know the status of the negotiations and what direction
16 they are heading in. And I don't know how often they
17 should be, but...

18 THE CHAIRMAN: I'm not sure what we are
19 attaching to it right now, that observation, because we
20 started out with a motion that called for wind and
21 negotiations in a sequential negotiation with two of the
22 other bidders. And then there has been some further
23 iterations around this whole thing.

24 And I think, Commissioner Clark -- after
1788

1 your comments with regard to the benefit of leveraging
2 the two, Commissioner Clark raised an issue around
3 wanting wind separate. So I am trying to see, I think if
4 we start from the beginning -- and Commissioner Conaway
5 is prepared to withdraw her motion which you seconded --
6 and we can try to work through.

7 COMMISSIONER CLARK: I have one other
8 issue, too. One of the things that was appealing to me
9 in the Staff's proposal is the reduced sizes in the PPA.

10 There are a lot of risk issues that Delmarva's brought up
11 are correct and it may be concern for the bidders making
12 it not as economically viable to bid in, and they have
13 all had their individual circumstances. Although I agree
14 with Commissioner Winslow that we need not hold them to a
15 rigid number, I do like the fact in these bids that we
16 are talking about smaller PPA.

17 THE CHAIRMAN: Well, I think the Staff's
18 recommendation incorporated a smaller PPA. So you don't
19 have a problem there.

20 I'm just trying to get to what precisely
21 we are trying to work out here that gives you a comfort
22 level, recognizing what has been said over here.

23 COMMISSIONER CLARK: That's all I have
24 to say on that.

1789

1 THE CHAIRMAN: So you're endorsing
2 Staff's recommendation with the modification that it
3 be -- with the understanding that negotiations would
4 occur with both other bidding parties, and there is
5 something else about when and I am still not quite sure.

6 COMMISSIONER CLARK: Just that it be at
7 least be able to be reviewed as severable. I think it
8 should go forward, Staff's recommendation, as a package
9 because there are some pretty well-reasoned reasons in
10 the recommendation as to why that should be the case, but
11 just having it broken out at the end of the day.

12 I mean, there is a lot of uncertainty,
13 there is no secret, Conectiv doesn't have -- it has a
14 site available in New Castle, we don't know what the
15 situation is in Sussex. We don't know what the situation
16 with NRG. I mean, it could be a very short negotiation
17 if the parties look at it and the parties end up saying
18 we can't meet the need. Just to really get all the
19 information on the table. If it breaks down to that
20 level, I would still be interested in seeing the wind,
21 with the reduced PPA.

22 THE CHAIRMAN: Yes. Because there are
23 other ways to address the support needed. Okay. Let me
24 just -- then I can restate this that somebody is making

1790

1 this motion I assume, I guess it's going to be you.

2 COMMISSIONER CONAWAY: Maybe I misspoke.

3 The motion, I believe, that is acceptable to this
4 Commission is that we accept Staff's recommendation with
5 one exception and that that be that both NRG and Conectiv
6 be allowed to negotiate at the same time; is that
7 correct?

8 THE CHAIRMAN: Two exceptions.

9 COMMISSIONER CONAWAY: We will backup to
10 the two exceptions. That we have a report on
11 BluewaterWind as a stand-alone. Correct? As a
12 stand-alone supplier?

13 THE CHAIRMAN: Yes. Flexibility.

14 COMMISSIONER WINSLOW: I want
15 flexibility for the PPA.

16 COMMISSIONER CONAWAY: Well, the PPA,
17 the reduced size of the PPA I thought was already in the
18 Staff's recommendation?

19 COMMISSIONER WINSLOW: That's right.
20 But my position is that we don't want a finite figure
21 there, we want a reduced, reduced PPA. My position is
22 that BluewaterWind should have a reduced PPA, but there
23 should not be a fixed figure, so that the parties can
24 negotiate in good faith on that issue and come up with
1791

1 something that's in the best interests of the consumers
2 of the state or some of the consumers of the state.

3 THE CHAIRMAN: Now that we are totally
4 clear on the motion.

5 COMMISSIONER WINSLOW: I second it.

6 THE CHAIRMAN: We do know that there is
7 a maximum. And when you say no fixed, we are not talking
8 about going over 600, but anything below that and
9 essentially that wind can be a stand-alone and
10 negotiations are encouraged with the two other bidders.

11 And I think that's pretty much what I got from that.

12 That was your motion, which -- Commissioner Clark, you
13 are still seconding?

14 COMMISSIONER CLARK: I am seconding.

15 THE CHAIRMAN: And I think we are very
16 clear. All in favor. Aye?

17 (Unanimous vote of the Commission.)

18 Opposed?

19 Let me say this before we depart: I was

20 waiting until we got through this entire process, and I

21 got my full share of work from Staff, to acknowledge all
22 of the fine work that they've done there. And everyone
23 kept jumping in and saying Staff this and that. And they
24 were thinking what kind of person is she? She said
1792

1 nothing. But I had a plan, though.

2 MR. GEDDES: Unlike your colleagues.

3 THE CHAIRMAN: But I especially want to
4 thank Staff for doing the heavy lifting, as they have
5 been doing now for several months in this process. It
6 has been an incredible amount of paperwork and
7 discussions, and as, you know, Bob Howatt's hair was
8 longer at one point. And also the other agencies, the
9 public, and my colleagues on the Commission, I think we
10 have always taken our work seriously and, here again,
11 it's been demonstrated that a small group can accomplish
12 a lot. And I just want to personally convey my thanks to
13 everyone for all of your contributions.

14 COMMISSIONER WINSLOW: Madam Chair, I
15 just also wanted to wish the parties good luck in the
16 negotiations and hopefully that everyone will cooperate
17 in the negotiations, and, most importantly, I hope that
18 House Bill 6 does not become known as the Geddes annuity
19 bill.

20 MR. CHERRY: Madam Chair, procedurally,
21 when might we see now this approved motion in writing so
22 we can share that with my respective boss to chime in?

23 THE CHAIRMAN: I will have to ask Staff
24 on that, on the motion that will be in written form.

1793

1 But, of course, we can't act on it until the next
2 meeting, which will be the 22nd of May.

3 MR. CHERRY: There I go learning your
4 process again.

5 THE CHAIRMAN: Yes, because we speak by
6 written order. So we have to have an opportunity to look
7 at that order and make sure it says what we want it to
8 say. And then we vote on the order. So as far as final
9 action on the decision, that's going to occur when we
10 next -- well, assuming the order is present, when we next
11 meet and vote.

12 MR. CHERRY: May I just request that a
13 first draft of it be out as soon as possible because it

14 will be critical for our thinking.

15 THE CHAIRMAN: Okay. Did you hear the
16 request from one of our sister agencies?

17 MR. BURCAT: To see a draft as soon as
18 possible.

19 THE CHAIRMAN: So you are multi-tasking?

20 MR. BURCAT: Yes, I am.

21 THE CHAIRMAN: Is there any other
22 business before the Commission.

23 (No response.)

24 If not, I declare the meeting adjourned.

1794

1 MR. FIRESTONE: Let's here a hand for
2 the dedicated public servants up in front of the room.

3 (Applause.)

4 (The meeting adjourned at 3:57 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1795

1 C E R T I F I C A T E

2

3 STATE OF DELAWARE:

4 NEW CASTLE COUNTY:

5 I, Ellen Corbett Hannum, a Notary Public within and

6 for the County and State aforesaid, do hereby certify

7 that the foregoing hearing was taken before me, pursuant
8 to notice, at the time and place indicated; that the
9 statements of participants were correctly recorded in
10 machine shorthand by me and thereafter transcribed under
11 my supervision with computer-aided transcription; that
12 the transcript is a true record of the statements given
13 by the participants; and that I am neither of counsel nor
14 kin to any party in said action, nor interested in the
15 outcome thereof.

16 WITNESS my hand and official seal this 10th day of
17 May A.D. 2007.

18

19

 Ellen Corbett Hannum, RMR, CMRS
Notary Public - Reporter
20 Delaware Certified Shorthand Reporter
Certification No. 118-RPR

21

22

23

24